



CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Friday, the 23rd October, 1953

OFFICIAL REPORT

CONTENTS

	PAGES
Basic Principles Committee Report— <i>Consideration not concluded</i>	325—383

LIST OF ASSEMBLY PUBLICATIONS

- I. Constituent Assembly of Pakistan Debates from August, 1947 onwards up to date. Price Rs. 17-8 or £1-17s.-8d. or \$5-27c.
- II. Constituent Assembly (Legislature) Debates, from February, 1948 onwards up to date. Price Rs. 53-12 or £5-15s.-7d. or \$16-17c.
- III. Constituent Assembly of Pakistan Mubahis from August, 1947 onwards up to date. Price Rs. 17-8 or £1-17s.-8d. or \$5-27c.
- IV. Constituent Assembly (Legislature) Mubahis from February, 1948 onwards up to date. Price Rs. 53-12 or £5-15s.-7d. or \$16-17c.
- V. White Papers—
 1. Conferences of Marketing Officers. Price Rs. 1-6 or 3s. or 41½c.
 2. Proceedings of the International Forestry and Timber Utilization Conference. As. 3 or 5d. or 6c.
 3. Proceedings of the Inter-Dominion Conference. Rs. 1-12 or 3s. 10d. or 53c.
 4. Instruments of Accession and Schedules of the States acceding to Pakistan. As. 9 or 1s. 2½d. or 17c.
 5. Monthly Statistics relating to Joint Stock Companies. As. 10 or 1s. 4d. or 19c.
 6. Trade Agreement between Pakistan and Japan. As. 8 or 1s. 1d. or 15c.
 7. Minutes of the Food Conference. As. 5 or 8d. or 10c.
 8. Report of the Third Session of the Economic Commission for Asia and Far East. As. 4 or 6½d. or 7½c.
 9. Proceedings of the Food and Agriculture (Planning and Development) Conference, 1949. Rs. 1-4 or 2s. 9d. or 38c.
 10. Proceedings of the Tea Conference held at Sylhet. As. 6 or 10d. or 11½c.
 11. Statement on the Water Dispute between West and East Punjab. As. 2 or 3½d. or 6c.
 12. Statement of Industrial Policy. Annas 3 or 5d. or 6c.
 13. The Pak. Air Dakota Crash near Vehari on the 26th November, 1949. Rs. 2-4 or 4s. 11d. or 68c.
 14. Proceedings of the First Meeting of the Council of Industries. As. 4 or 8d. or 10c.
 15. Report of the Pre-conference Meeting on Food and Agriculture Outlook and Programmes in Asia and Far East. As. 10 or 1s. 4d. or 19c.
 16. Proceedings of the Third World Health Assembly. As. 5 or 8d. or 10c.
 17. Correspondence regarding "No-War Declaration" with P. M.'s Statement. Rs. 1-2 or 2s. 5d. or 34c.
 18. International Islamic Conference (Recommendation and their Implementation). As. 5 or 8d. or 10c.
 19. General Agreement on Tariff and Trade. As. 6 or 10d. or 11½c.
 20. Papers relating to the International Labour Organisation (31st Session). As. 5 or 8d. or 10c.
 21. Statement showing the total number of persons employed under the Government of Pakistan belonging to different Provinces, States, etc., of India. As. 5 or 8d. or 10c.
 22. Double (Income) Taxation Agreement between Pakistan and India. As. 5 or 8d. or 10c.
 23. Text of the Resolution of the Security Council and the U. N. Commission for India and Pakistan in regard to Kashmir Dispute. As. 5 or 8d. or 10c.
 24. Trade Agreement between Pakistan and West Germany. As. 5 or 8d. or 10c.
 25. Trade Agreement between Pakistan and India. As. 5 or 8d. or 10c.
 26. Trade Agreement between Pakistan and U. K. Rs. 1-8 or 3s. 3d. or 45c.
 27. Pakistan's Balance of payment. As. 12 or 1s. 7½d. or 23c.
 28. Statement showing the total number of Delegations sent by the Government of Pakistan. Rs. 4-8 or 9s. 8d. or \$1-35c.
 29. Statement showing the total number of Delegations sent out to Foreign countries. Re. 1 or 2s. 2d. or 30c.

These publications are available on sale from the Manager of Publications, Government of Pakistan, Karachi, or from their Agents abroad, whose list is given on the inner side of back cover page.

CONSTITUENT ASSEMBLY OF PAKISTAN

Friday, the 23rd October, 1953

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at Ten of the Clock, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

REPORT OF THE BASIC PRINCIPLES COMMITTEE—*Consideration contd.*

Mr. President : We resume further consideration of the following motion moved by the Honourable Mr. Mohammed Ali on the 7th October, 1953 :—

“ That the Report of the Basic Principles Committee be taken into consideration.”

Mr. Jnanendra Chandra Majumdar (East Bengal : General): *Now, Sir, no doubt, religion played a very important part during a certain stage in the history of the development of the human race. When the human race was steeped in the darkness of superstition and ignorance, when the society was not organised and developed, when even the elementary principles of science were unknown, it was then only that the various religions in different regions of the world were necessary and utilised by the Heads of States to bring up the human race and society to a higher level of development. But the modern time is a highly developed scientific age and the human race has gone up far above the level of medieval civilisation. Now in every advanced and progressive state, religion has been and is being separated from the functions of the State. So, Sir, although Islam like other religions prescribes lofty ideas and principles, many of these principles were meant mainly and primarily for much simpler social organisations of the medieval period and are quite unsuitable for the highly complex social organisations of the modern times and will stand in the way of progress and advancement. When the Nazimuddin Report was published, Begum Shahnawaz, Member of this House and a very prominent Member of the Muslim League, declared :

“ We should either have the Islamic benevolent dictatorship or something akin to American form of Government or Western democracy. The type of constitution just announced for Pakistan is neither the one nor the other.”

So she did not mention anything about Islamic democracy. Probably there was no such special type of democracy as may be called Islamic democracy. For those who maintain that Islamic religious principles should dominate all political and social institutions for all time, I am just reading an extract from the speech of late Quaid-i-Millat Liaquat Ali Khan delivered in this House in the Budget session of 1949. It was only a story. Now this is what Liaquat Ali Khan said :

“ Now I do not know whether the Honourable Members of the House have heard the famous story of the *Bujhbujhakkar*. I intended to say it in Urdu, but now I will say it in English so that you can understand it also. In a little village in the Punjab there used to live a wise man of the village whom they used to call *Bujhbujhakkar*. Whenever these poor villagers had any trouble or any difficult problems to solve, they

*Speech not corrected by the Honourable Member.

[Mr. Jnanendra Chandra Majumdar]

used to go to the *Bujhbujhakkar* for advice. It so happened one day that a little boy who was learning to climb a tree got on the top of a tree but he could not come down. All these poor villagers gathered round that tree and they did not know how to bring down this boy. So they went to the *Bujhbujhakkar*. The *Bujhbujhakkar* came, looked up the top of the tree and he shook his head and said: 'It is, indeed, a difficult problem'. So, he asked these villagers to bring a rope. When the rope was brought, he asked them to throw it up to the boy upon the tree. They threw one end of the rope to the boy and asked him to catch it and tie it round his waist. The poor boy did as he was told. Now, the great *Bujhbujhakkar* said: "Come out three or four stout fellows and pull the rope!" So the rope was pulled and this poor boy fell down and died. They all got round him, this great wise man from a village in the Punjab. They said: 'Look, what you have done'. So, he shook his head again after offering prayers for the soul of the departed. He said: 'You know, my dear friends, his time had come, and when death comes, nobody can do anything. I have pulled out hundreds of people by the same method from the well!' That is the conception of my Honourable friend of nationalisation".

That is the conception of my friends here. So, Sir, you see that the result may be disastrous if the modern *Bujhbujhakkar*s tie up the country and try to drag it down by the rope of religious principles when the country is not down in the well of superstition and ignorance, but has gone up high in this scientific and industrial age.

Sir, as regards the Head of the State to be a Muslim I like to lay before you the views of late Quaid-i-Millat Liaquat Ali Khan. This is more eloquent than what I may say here. Our friends opposite take the name of Quaid-i-Azam and Quaid-i-Millat when it suits them but they are not prepared to follow him. They are the persons who intend and seek to trade upon the sacred name of Islam. This is what Quaid-i-Millat says:

"Sir, my Honourable friend, the Leader of the Congress Party, had a visit from some Ulemas. He did not tell us whether it was that they had come in search of knowledge to him. But I presume that this visit was paid by certain Ulemas according to him from Lahore on their own initiative and they left certain literature with him which seems to have upset my Honourable friend, who is very seldom upset. I can quite understand why this visit and why this handing over of this literature was done. There are some people here who are out to disrupt and destroy Pakistan and these so-called Ulemas who have come to you, they have come with that particular mission of creating doubts in your mind regarding the *bona fides* of the Mussalmans of Pakistan. I want to say and give a warning to this element which is out to disrupt Pakistan that we shall not brook it any longer. They have misrepresented the whole ideology of Islam to you. They are in fact enemies of Islam while posing as friends and supporters of Islam.

"Sir, my Honourable friend said that according to these people, the Muslims will not offer their Juma Prayers if there was a non-Muslim as the head of the State. Well, Sir, till yesterday—when I say yesterday I am only talking figuratively—we had non-Muslim rulers here. Were not the Muslims offering prayers? Were they not offering Juma Prayers? Can you say they have never offered Juma Prayers in this country? How can, then, anybody come to you and how easily you get taken in by a statement of this kind?"

"Supposing there are some maniacs in this country or amongst the Mussalmans, are you going to be guided by what they say or are you going to be guided by what a vast majority of Mussalmans believe in? If my friend wants that we should succeed in persuading every Mussalman in Pakistan to think in the same way on every matter. Well that is a task which is not possible for any organization or leader or any people to do.

"Sir, my Honourable friend said that you have talked of equality and again he has been misled by these so-called Ulemas because according to these people there can be no equality. I am really surprised that a man of his ripe experience should really be taken in so easily and should put all his belief in what these two people have told him and not believe in what we and men like Maulana Shabbir Ahmad Osmani have been telling him about Islam. Sir, as I said, when you have made up your mind, it is very difficult to try and convince you.

"Sir, my friend said that these people told him that in an Islamic State—that means a State which is established in accordance with this Resolution—no non-Muslim can be the head of the administration. This is absolutely wrong. A non-Muslim can be the head of administration under a constitutional Government with limited authority that is given under the constitution to a person or an institution in that particular State. So here again these people have indeed misled him.

Sir, Honourable Mr. Nurul Amin while criticising Mr. D. N. Dutta said that :

"The Muslim League is the organisation or you may call it a party now, which has a right to give a Constitution according to its own ideas, according to its own ideology, to the country, to the people. It is their claim. They have achieved Pakistan—none else. Now people come as co-sharer. Those who are opposed to the Muslim League ; those who opposed Pakistan movement, they come and suggest do this and do that. Constitution making is the responsibility of the Muslim League. They have brought Pakistan from the dreamland to the land of reality and they are bound to give the country a Constitution of their own ideology, etc."

Sir, Mr. Nurul Amin in his eulogy of Muslim League loses his balance and asserts that no other person not belonging to the Muslim League has any right or business to take share in the framing of the Constitution for Pakistan. Sir, Pakistan has come into existence not as a result of an independent movement of the Muslim League only. The movement for Pakistan was mixed up with the much bigger and extensive movement in Indian struggle for independence throughout Indo-Pakistan and Pakistan came as a bye-product when the whole sub-continent became independent. So those who fought and suffered for independence are inhabitants of Pakistan, have as much right and claim to take part in the framing of Pakistan's constitution as Honourable Mr. Nurul Amin and persons like him have. Even if we accept for argument's sake that the All-India Muslim League was the sole agency which brought Pakistan from the dreamland to the land of reality, let us see what kind of League it was that did bring in Pakistan. I am just quoting Mr. H. S. Suhrawardy's statement, which appeared in today's *Dawn*. This is what he says :

"He (Honourable Mr. Mohammed Ali) refuses to recognise that after the Partition, when the All-India Muslim League died a natural and logical death, a new Muslim League was organised, known as the Pakistan Muslim League, in which those persons only were included who pledged their support to the ruling clique, and persons of independent views were meticulously excluded.

"The Muslim League, trunk, branches, leaves and tendrils, were all nominated by the ruling party, i.e., the Ministry. This can hardly be considered a legitimate successor of the old Muslim League, to which all of us belonged. It can by no means be called a national organisation, or even a political party—it is just a Government *junta*.

"What kind of a Party is it which today—in a full throated manner—supports a Prime Minister, or a Chief Minister, and tomorrow when he is out of power, not one voice is raised in support ; on the other hand, he is condemned and derided ; when Provincial Premiers and others refuse to serve on his Working Committee once the President is out of power ; when persons who were never in the Muslim League before are put in power as Muslim Leaguers in the course of a few hours ; when persons are in power who either fought against Pakistan, or were never members of the Organisation, but are now powerful Ministers, holding important portfolios ; when the entire policy of the League is fashioned and formulated by Provincial Premiers in the interests of their own power politics ; when Ministers condemned for inefficiency and worse in one regime are placed in positions of responsibility in the next, and are supported with all their sins washed away ?"

[Mr. Jnanendra Chandra Majumdar]

Sir, this is the present Muslim League, the Organisation that is entitled to frame Constitution for Pakistan!

Sir, while speaking of Islamic Constitution, Mr. Nurul Amin admits that those who are outside the pale of Islam may have genuine apprehensions as they have not seen real Islam at work in this country. So, Sir, thousand years of Muslim rule and six years of Muslim League and Nurul Amin's rule could not show us real Islam at work. Mr. Nurul Amin has also got the same apprehension as he admits to have drifted from real Islam. Physician, heal thyself first and then prescribe for others.

Sir, Mr. Nurul Amin is ready to take a few steps backward to put the country on the right track, to send back to the 7th Century conditions and then to take the right track. Sir, the result will be disastrous in the same way as when one tries a grown up young man to turn back into a child in order to take the right track so as to grow up into a good young man again.

Now, Sir, I want to point out some very important items or provisions that have not been included in the Report. Sir, you know it that detentions without trial are becoming a normal feature in Pakistan. Provision should be made for a member of a Legislature detained without trial to attend any Session of his Legislature if he so desires under proper safeguards or restrictions.

Sir, more than 25 per cent. of the seats in East Bengal Legislative Assembly are kept vacant and not filled up, some for more than five years and some not at all filled up from the time of the establishment of Pakistan as at Dinajpur general and scheduled caste seats.

Provision should be made for filling up a vacancy with a certain period, say 90 days of the date of occurrence of such vacancy.

Audit, like Justice, should be independent of the Executive. But the salary and other conditions of service of the Auditor-General are to be determined by the sweet-will of the Head of the State who is to act on the advice of the Ministry, whereas safeguards have been made for securing independence of Judges.

Sir, we hear so much about nepotism, favouritism and corruption in public servants. In order to do away with these kinds of corruption, all appointments in Government Services should be on the recommendation and advice of the Public Service Commission. But such recommendations and advice have been made *not binding*. Section 228 says :

".....and it should be the duty of the Public Service Commission to advise on any matters which the Head of the State or, as the case may be, the Head of the Unit may refer to them :

"Provided that the recommendations and the advice of the Public Service Commission under this sub-paragraph should not be binding on the Head of the State, or as the case may be, on the Head of the Unit."

Now, Sir, no source of income, except that of Land Revenue, has been included in the List for the Units. The Unit shall have to depend on the doles from the Centre for any proper discharge of their functions.

Now, Sir, I come to the question of electorates. We on this side of the House want joint electorates. It may be asked why being in the minority we give up the so-called safeguards of separate electorate for the minorities. Sir, we the Hindus, do feel it to be beneath our dignity

and honour and self-respect to live under any sort of artificial safeguards. We want equality and nothing else and no patronising lip-deep benevolence. We want Pakistan to be a homogeneous nation where every community will have to depend on every other community economically, socially and politically. If there is joint electorate during the general elections people of whatever community they may belong to shall have to go to the people of the other communities for their votes and support and thus there will be intermixing with and mutual interdependence on each other. This repeated process of mutual intermixing and interdependence will do away with political differences and ultimately Muslims will cease to be Muslims politically and Hindus will cease to be Hindus politically and in course of time there will be a homogeneous nation. Keeping this high ideal before our mind we want to do away with the so-called safeguards for the minorities even though we may be loser for the time being. But, Sir, we cannot understand why our friends of the majority community want to thrust on us the so-called safeguards of separate electorate in spite of the fact that we strongly resent it. We know why the Britishers adopted this. They were the minority community and in order to rule over the majority they had to introduce the method of 'divide and rule', so that the majority will be divided and may not combine against the minority rule of the British. But now, Sir, the majority community is the ruling community and so where is the necessity of adopting the 'divide and rule' device to divide the minority further? Probably they have inherited from the retiring British authorities along with their method of administration, their fear complex for the people of other communities. Sir, in this matter of electorates, our East Bengal friends of the Muslim League are more vehement. Mr. Nurul Amin unable to meet the arguments and facts put forward by Mr. Prem Hari Barma and others used the method of personal abuses and in this matter he has got an able assistant in Mr. Ghayasuddin Pathan in echoing and re-echoing of what he says. Mr. Prem Hari Barma, the Scheduled Caste Member of this House, has become the target of Mr. Amin and Mr. Pathan. Mr. Barma was a Scheduled Caste Independent Member of the Bengal Assembly from the Dinajpur constituency. When Mr. Nazimuddin became Chief Minister he was taken in as a Minister in his Cabinet but during the next general election he was so much unpopular for being in the League Ministry that he was defeated though he stood as an independent candidate and though the Scheduled Caste voters were 60 per cent. of the total votes. In this connection I may mention that the candidates of Scheduled Caste Federation were also defeated and only the Congress and Communist candidates were returned in this constituency, wherein the Scheduled Caste voters were in the majority. What was the reason for his failures according to Mr. Amin and Mr. Pathan? According to them, there being a joint electorate he could not procure the votes of the Caste Hindus though he secured the majority of the Scheduled Caste votes. I think my friends do not know that the Scheduled Caste voters were in the majority in that constituency. Again they say that because he was defeated in the election he has no right to speak for the Scheduled Castes according to them. If that is so, Sir, then what right has Mr. Pathan to speak for the Muslims as was he not defeated in the election in his constituency where he stood as a Muslim League candidate, though some of the top-most leaders of the All-India Muslim League went to his constituency for his help?

Then, Sir, was not Khwaja, then Sir, Nazimuddin defeated by Mr. Fazlul Haq and had to be taken into the Assembly by the backdoor of a created bye-election? Was not Sardar Abdur Rab Nishtar defeated

[Mr. Jnanendra Chandra Majumdar]

in the election for a seat in the Central Legislature of United India from N.-W.F.P. ? Their failures did not prevent them from becoming top-most leaders of the Muslim League. But what is sauce for the gander is not sauce for the goose. Of all persons, Mr. Pathan should not come forward with the argument of failures in the election. My dear friend, living in a glass case it is not for you to throw stones at others.

That the opposition of the Muslim League members against the introduction of joint electorates is due to a fear complex, as I have said before, will be evident from the speech of Malik Shaukat Ali delivered the other day. He said that the real reason why we on this side are demanding joint electorate is that though we are 25 per cent. of the population of East Bengal we really desire and shall be able to dominate the 75 per cent. of the Muslim community. So the cat of fear complex is out of the bag. To prove that it is possible in East Bengal, he cited the instance of the Punjab before Partition, namely that "45 per cent. of the Caste Hindus (that the Hindus who were 45 per cent. of the population) of the Punjab controlled the destinies of the majority community. Sir, it is a strange assertion and is miles away from the truth. If anybody or community controlled the destinies not only of the majority community but also of the whole people it was the British who directly and often indirectly through the Ministry of the Unionist Party containing the Muslim Prime Minister and a majority of Muslim Ministers really and effectively controlled the destinies of the Punjab and never slackened their grip and control over the Punjab that was the main recruiting ground for the British Indian Army of occupation. Again, Sir, Malik Shaukat Ali cited another instance, namely, that of the N.-W.F. Province. Here the barely 20 per cent. minority community dominated the 80 per cent. Muslim and how—because he had the Congress Government there. Can there be anything more strange and ridiculous than this. The Congress Ministries of N.-W.F.P. always consisted of the overwhelming majority of Muslim Ministers including the Muslim Prime Minister and never there were more than two Hindu Ministers in a Cabinet of about seven or eight Ministers.

That Congress Ministry also functioned for a period of not more than four years. To my esteemed friend Congress and Hindus are synonymous and so according to his estimation, Honourable Qayyum Khan while he was Deputy Leader of the Congress Central Parliamentary Party of India, was not a Mussalman, but he became so when he joined the Muslim League Party at the time of partition. This sort of queer phenomenon of apprehension that has seized the minds of our friends opposite was due to their fear of imaginary ghost of Hindu domination, the apparition of Hindu domination that appears in their mind. Our request, Sir, to them is "do away with fear and be courageous. Throw off the coloured eye glasses of fear and suspicion and put on normal glasses and you will find everything normal".

Before I sit down, Sir, I would like to read a portion of the speech of Quaid-i-Azam that he delivered after his election as the First President of this House, Constituent Assembly of Pakistan. Every one of my friends opposite takes the name of late Quaid-i-Azam in season and out of season and pretends to show himself as his true follower. So I hope, Sir, that they shall follow every sentence in the spirit in which the late Quaid-i-Azam asked us to follow. This is what he said :

"I cannot emphasise it too much. We should begin to work in that spirit and in course of time all these angularities of the majority and minority communities—the Hindu community and the Muslim community—because even

as regards Muslims you have Pathans, Punjabis, Shias, Sunnis and so on and among the Hindus you have Brahmins, Vaishnavas, Khattris, also Bengalese, Madrasis and so on—will vanish. Indeed if you ask me this has been the biggest hindrance in the way of India to attain its freedom and independence and but for this we would have been free peoples long long ago. No power can hold another nation, and specially a nation of 400 million souls in subjection; nobody could have conquered you, and even if it had happened, nobody could have continued its hold on you for any length of time but for this. Therefore we must learn a lesson from this. You are free; you are free to go to your temples, you are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State. As you know, history shows that in England conditions some time ago were much worse than those prevailing in India today. The Roman Catholics and the Protestants persecuted each other. Even now there are some States in existence where there are discriminations made and bars imposed against a particular class. Thank God we are not starting in those days. We are starting in the days when there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another.”

But Mr. Nurul Amin wants us to go back to the 7th Century when these conditions do not prevail.

“... We are starting with this fundamental principle that we are all citizens and equal citizens of one State. The people of England in course of time had to face the realities of the situation and had to discharge the responsibilities and burdens placed upon them by the government of their country and they went through that fire step by step. Today you might say with justice that Roman Catholics and Protestants do not exist: what exists now is that every man is a citizen, an equal citizen, of Great Britain and they are all members of the nation.

“Now, I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.”

With these few words, I resume my seat.

The Honourable Mr. A. K. Brohi (Sind: Muslim): Sir, we have listened to this debate with some amount of attention and earnestness, and we are grateful to the Members who have participated in the general debate in regard to the consideration of the Report of the Basic Principles Committee for all the suggestions that they have made. We are also grateful to them for the criticisms that they have made. This we say not in a spirit of mock modesty or humility, but with profound reverence to their sagacity and to their *bona fides*. We realise that we are all engaged in a common endeavour to evolve a constitution for this country, a constitution that will stand the test of time, a constitution that will do honour to those who are sponsoring it and a constitution that will come to provide an honourable place for individuals of the coming generations to lead their life in accordance with reason and fairplay.

The subjects that have been covered, Sir, during the course of the general debate extend to numerous items and if each one of them were taken up and dealt with in all its aspects, in all its comprehensiveness, considerable time must necessarily lapse before one should be able to do one's duty properly. I will, therefore, confine my remarks to only four broad principles and would attempt to give a rationale of some of the recommendations that have been contained in the Basic Principles Committee Report with the hope and belief that they will appeal to those who have hitherto been sceptical about them.

The first point that I will take up will be what has been categorized during the course of this debate as ‘The Islamic Character of the Constitution’.

[The Honourable Mr. A. K. Brohi]

The second, over which I will linger a little longer and take some time of this House and which, I think, is the basic question to the making of our constitution, is the problem of the federal structure envisaged in the recommendations of the B.P.C. as modified by the statement made by the Honourable Mr. Mohammed Ali on the 7th October, 1953, setting out the basis of an agreement between the various representatives of the people of Pakistan. Some criticism has been offered with regard to the wisdom of the formula. It has been stated that our Constitution ceases to be federal. It has been argued that the formula is impracticable and that its acceptance is fraught with momentous consequences. I shall endeavour to explain and give reasons in its support in an attempt to convince those who have been critical about the wisdom of the formula.

The third principle to which I would refer is the position of Judiciary in Pakistan. With the possible exception of a few friends who condescended to bestow some attention on this all-important question, I must complain that full justice has not been done to this principle and it has not received sufficient attention from the House. Sir, I will propose, with your kind leave, to state at least those salutary principles on which we propose to make Judiciary in Pakistan independent of those menacing influences which emanate either from legislature or from executive influences which are calculated to paralyse the independence of the Judiciary, to shake its foundation and to expose it to vicious attacks.

The final thing, Sir, on which I will also take some time, would be the position of services in this country as adumbrated in the recommendations of the Basic Principles Committee. I think mine will be the only voice here which, if at all, will be venturing to offer a few thoughts in regard to the concrete proposals that have been made in the B. P. C. Report in relations to the conditions and terms on which the services are to be employed and the guarantees that are to be contained in the Constitution in order to ensure that their conditions and tenure of service will not, in any manner, be seriously interfered with. And finally, Sir, I will have to say a few words generally with regard to the scope of constitution-making in this country.

That is the programme which I propose to follow. I will now take up the first thing first, namely, the Islamic character of the proposed Constitution.

Sir, analysing the Basic Principles Committee's Report, broadly speaking, there are three elements in it which can be taken in their totality as attracting for it the appellation of Islamic Constitution. First, some statements which appear in the directive principles of State policy, secondly, the most important clause in the Constitution in relation to this particular principle is the incompetence of the legislature to enact any law which may be repugnant to the Holy Quran and the Sunnah; and finally, the recommendation that the Head of the State should be a Muslim. I think, Sir, these mainly are the elements in the recommendations of the Basic Principles Committee's Report which confer, if at all, on proposed constitution the character of an Islamic Constitution.

Now, Sir, the directive principles of State policy by and large do not pre-figure in numerous constitutions of the world. The first experiment that was made in this regard was in the constitution of Ireland which was followed by the then sister dominion—now independent Republic of India or Bharat. You will also find in the Constitution of Burma recommendations of the sort contained in the directive principles of State policy in our

Report. To the students of Constitutional Law and to those who deal with the law of constitution, these recommendations will appear to have no binding force about them. In other words, the courts of law, in regard to any issue where their operation is involved or invoked or is argued, will be supremely indifferent to the existence of these directive principles. They will not care for what that chapter may contain. Nevertheless that chapter does have some importance of its own and its importance consists precisely in this that it is a manifesto of the Government of a country. It is the programme of State policy which the Legislature and the Government will have to endeavour to implement. It sets forth in clearest terms all the elements of the ideology on which the State is going to be founded. In practical parlance it is to be regarded as a key to the interpretation of the spirit of the constitution. There are even judicial pronouncements of some of the courts that the directive principles of State policy may well be taken into consideration in the interpretation of the underlying spirit of a legislation which they are called upon to adjudge on the ground of repugnancy. It is also said that in another respect as well, the directive principles of State policy are a useful guide in the conduct of affairs of State and ought to be mentioned in the constitution of a country. We have ourselves provided that the Head of the State has the option of returning a Bill to the legislature asking it to reconsider either the whole Bill or a particular clause thereof. The legislature is sovereign in its sphere of activities and it may or may not amend or modify the original Bill. In that connection pronouncements of constitutional lawyers are to this effect that the Head of the State, when he is called upon to exercise his right of giving assent to a Bill or to exercise his option of returning the legislation to the Chamber for further consideration, may well look at the principles of State policy chapter for guidance and see whether or not the spirit of a given legislation is in accord with the principles of state policy and may return the Bill to the Legislature or withhold his assent therefrom according to the dictates of such principles. And then in a free country the press and public opinion will always no doubt declare, on the basis of these directives whether or not a particular measure is in conformity with the principles of State policy and will thus bring indirect pressure upon the members of the Legislature to abide by them. These are the reasons why in modern constitutions it is increasingly becoming a fashion to incorporate a chapter relating to the directive principles of State policy.

The last thing that I could say about it is that the executive which is charged with the duty of implementing the law, after it is passed by the legislature, has to take into consideration these directive principles of State policy and its every single action has got to be consistent with these principles. Criticism, whether in the House or outside, from the public platform or in the press and the radio, would be focussed on it and would reveal whether a certain measure sponsored by the Government of the country is or is not in accord with certain principles which are contained in the directive principles of State policy. Consequently the vague generalisation which I have heard endlessly, "Oh! that makes no difference; they are pious wishes", is not justified. I think, Mr. President, you will agree with me that they are not embodied in the Constitution as innocuous statements, or as expressions of pious wishes, but they are those elements of State policy that do enter into consideration for a variety of purposes. They manifest the spirit, and the ideology on which the constitution is grounded and they assist in the growth of healthy criticism in the country.

[The Honourable Mr. A. K. Brohi]

In the chapter on directive principles of State policy there are several recommendations. I am not going to enlarge upon the scope of those recommendations. It may be that a few recommendations may have to be altered or a few may be amended. When the Report comes under consideration parawise it would then be the proper time to deal with individual recommendations. At the present moment when we are engaged on a general discussion, no useful purpose will be served to descend to details. Therefore, I am only stating briefly the reasons why this particular chapter ought to be there.

Now, admittedly the reader of this chapter in the recommendations of the B.P.C. Report is bound to say that the ideology which is underlying the statement of directive principles of State policy is Islamic. It is an enunciation of the approach to matters—domestic and foreign—particularly in the discharge of governmental duty, which a Muslim State ought to have before itself. That is bound to be the verdict of an impartial reader. There are some paragraphs in the Objectives Resolution—particularly the paragraph which deals with “enabling the Musalmans to lead their life according to the Quran and Sunnah”—which point in the same direction. These two things read together create an impression that the people who are endeavouring to frame this constitution are pledged to advance Islamic ideology.

Now, two arguments have been urged against it. First is that in the State of Pakistan where a large bulk of population consists of Muslims there are also minorities, which are not microscopic, and which do not profess that faith, and consequently any enunciation of this basic attitude, which permeates all the other issues, is likely to create resistance. In relation to that argument counter-arguments have been urged: one of them is that this declaration is intimately associated with the declarations of those who were initially responsible for the starting of the movement that the ideology practised in the State of Pakistan—if and when founded—shall be Islamic. They say that it is too late in the day now to retract from that declaration and that a retraction of that declaration will run counter to the earlier announcements of those who were engaged in winning Pakistan for the Musalmans. They stand bound to fulfil that pledge and particularly when the Holy Book declares:

“Keep up your obligations and your promises”.

Those persons who were charged with the duty of fighting for Pakistan went before their people and had declared to them that that was their intention and now when the time for the fulfilment of that pledge has come and they are engaged in framing the constitution, it would be I think too late in the day for them to retract their earlier steps. Sir, that is one of the arguments that has been urged. There has also been some arguments against Islam. In this context may I point out, Sir, that the fear is probably not of Islam but it is due to the fact that those who are professing Islam or call themselves Musalmans misbehave or behave contrary to the tenets of Islam and the Quran and Sunnah. They are judging us by what we do and by the manner in which we behave, *i.e.* by our conduct or misconduct. They know that when all is said and done, these declarations are all right but what about Musalmans themselves. We see in the streets of Pakistan evidence of the fact that there is in practice a radical departure from the ideology for which Islam stands. The practical illustration of that ideology is that our jails are full with Muslims, in

our markets black-market practices are afoot, and all manner of anti-Islamic activities are being countenanced. There is in practice no respect for Islam and no respect for law and order. There is no respect even for the view-point of those who consider themselves as a minority community. That has been the reproach, which has been urged against this argument and to a considerable extent the reproach is well justified. No man with his hand on his heart dare say that the people, the 76 million people in Pakistan, who have been now constituted into one nation, from August 1947 till today, are by any means reflecting the light of Islam. And the critics say "But after all Islam is to be judged by its fruits and its fruits are the Musalmans, and if from that fruit you judge the tree then Islam is not the thing worth adopting as a religion." It is that part of the argument that is fallacious. It is true, Sir, that there is a saying in English language that we judge a tree by its fruits. But I think, Sir, the better saying is 'judge the tree by its fruits by all means but judge the tree by its roots as well'. I propose to state something about the root of the tree we call "Islam". The root of Islam is embedded in the Holy Quran. It is the root which stands illustrated in the heroic life that our Prophet lived, in the example that he set to the world and the way in which that example was followed by those who came after him and worked in his footsteps in the spirit and manner in which they were expected to follow him. I say that that part of the argument, namely, that 'as the condition of the Musalmans is bad, therefore Islam is bad' is bad logic. According to that argument no religion can be defended. How can you defend Christianity? How can you defend Buddhism or other religions? Is not the Christianity which is practised by Christian Europe today many miles away from the Christianity that is ordained in the New Testament? In fact the Christianity is professed by different countries of Europe and is claimed by them to be the law of God. But we know Christ is little reflected in the life of Europe. Therefore on that account alone you cannot call Christianity bad. It has never been an argument and it has never been advanced seriously. The Christian European countries have been fighting for centuries amongst themselves and we have seen the bloodiest of wars fought by them and yet they are not weary of calling themselves Christians. Therefore to argue from this that Christianity is something bad is ridiculous. It is, I think, bad logic and when logic is bad, the exponents of it ought to retract it.

I therefore would like to set forth two or three clear characteristics of Islam as I understand them. I have not the least doubt that if they are appreciated by the minorities they will also come to the conclusion that there is nothing dreadful about them and that what Prophet Muhammad has said is not wrong. In fact his teaching has been followed by a very substantial part of the world for over 13 centuries. It is not proper to say that there is one God for the *Mashriq* (East) and another for *Maghrib* (West); that everything in the West is bad and everything in *Mashriq* (East) is good, or that *Mashriq* (East) has been looked after by God and all that is in *Maghrib* (West) is evil or vice versa. No, the light of God has radiated everywhere and it has manifested itself everywhere. All that is good and great in the 20th century derives its power and inspiration from what is contained in the message of God delivered to His Prophet 13 centuries ago. With the hope of being appreciated now I crave your leave to state three or four outstanding essentials. These essentials are so natural, so much in accord with our thought, and in fact they have so much controlled our thinking, that we have now come to accept them as truisms. There can be no doubt about that particular issue at all. Now in the first

[The Honourable Mr. A. K. Brohi]

place it is wrong, mightily wrong, to say that Islam is a religion amongst other religions. There is no plurality of religions because Islam itself says that religion is one and that is why, Sir, in the last *Sura* (*Almaida*) that was revealed to Prophet of God shortly before he departed from this earth, it was said :

“ *Al-yaumo akmalto lakum dinokum.* ”

“ Today I have perfected your religion. ”

Then in the Quran comes the verse that the religion is one, and that all the prophets, who have come, have come in order to be able to establish respect for law ; that the law is subject to change according to space, time and conditions that prevailed ; that with the passage of time the religion gets corrupted ; and that the Prophet of God in whom we believe is the last messenger in the line of messengers, the messenger who brought the last message for the evolution of humanity and delivered the final dispensation of God. If somebody says that another person will come after the Prophet to make religion more perfect, as it has been argued, the position on the face of it is unacceptable and silly. If you say that religion has been perfected it follows that the process of perfection is complete and there is no room for another prophet to come and make any addition to this perfection. So that is why with the coming of Islam the evolution of religion comes to an end. That is why it is the religious duty of every Musalman who believes in his creed and doctrinaire to respect *and to believe in all the prophets who went before Muhammad*. To try to discriminate between any of the prophets is forbidden by the law of God. The Quran says that you must not discriminate between prophets.

You are not allowed to do so ; because you have not the means and knowledge to pass judgement on them. You are not qualified to judge them. It is for this reason that it has been rightly said that you should respect all religions. The Members on the opposite benches said that they respect all religions. I say that they are Muslims in this respect because this injunction is not contained in the Vedas, it is not contained in the New Testament ; it is not contained in the Old Testament or in any other religion's book I know of and if any one says that it is contained anywhere else I challenge him to cite any pre-Quranic revealed religious text in which people have been commanded to respect all religions in such clear term as Islam has enjoined. Islam has made it a religious duty of Musalmans to respect all prophets.

Prof. Raj Kumar Chakraverty : What about prophets who came after the Holy Prophet ?

The Honourable Mr. A. K. Brohi : I do not think that it can be said that any prophet came after the Holy Prophet for the simple reason, as I have said, the message is complete. It is complete and perfect and there is no room for further perfection. I am glad that you have asked that question. I am grateful to you for raising that question and I will be glad to answer it. I am glad you are interested in this problem. In fact I have been all my life in search of people with such interests. To come back to the answer, there is one point which I would like to mention. In Islamic teaching such a large catholicity of approach is in evidence that not only the prophets whose names appear in the line of prophets in the Quran but all the messengers of God everywhere are to be respected for the simple reason that the Quran itself declares that there is no place in the world to which we have not sent a warner and a guide. Consequently you cannot argue that merely because certain names are given in the

Quran and certain names are not mentioned, the names of prophets which have not been mentioned are not to be regarded as prophets or the law-givers. The catholicity of Islam is all pervasive. It admits that in the pre-Quranic age revelations came by instalments. Now may I tell you why resort was had to this instalment business? It has an analogy in the life of the child. When a child is born and when he is in the lap of the mother, he is a helpless struggling baby. The mother has to feed him, to clothe him, and to look after him to see that he grows up in a proper way. It is her responsibility to look after the child. But when he grows up a little he is sent to school. He is to be told every day to go to school. There are other directions that have to be given to him till he grows up and attains the age of maturity and when he reaches maturity, the attitude of the mother changes and becomes different. She does not only allow him to look after himself but seeks his counsel and consults him in her own affairs and very often follows his advice. Now, if my honourable friend has studied sociology, he will realise that there is a close analogy between the growth of mental life and human society. The society like child has also been through the infant stage: it has also like child gone through the adolescent stage: and the adult stage, and at each stage a different message was required because the requirements of each stage were different, till it reached the maturity point. The Prophets of God represented the law of God. Human intelligence is imperfect and could not confer perfection on laws. If somebody comes today and says "I am a prophet" the question will be what has he to say to us. The instrument which has been recommended by the Prophet for the pursuit of truth is reason. The Holy Quran is full of the demands for being rational. We have been asked to discover reasons for all that exists in our inner as well as the outer life. It says: "Will you not think, will you not reflect", "will you not ponder", will you not consider?" These are all demands on us for being rational and the Holy Quran is full of these. Whenever attention is invited to something it is done by saying—"Oh, then, men, will you not think" when attention is diverted to another thing, it is again said "will you not ponder, will you not take this into consideration?" What do all these commandments mean? These are appeals addressed to the reason of the man. It is the reason in the man which represents the highest level of his development and thanks to reason the mankind is able to look after itself. Consequently, there is no necessity for any prophet now to come because what will be his business on earth now. If I am young and immature, somebody has to be my guardian to keep me under his tutelage. He has to look after me till I have reached the stage of maturity and understanding. The Quran says:

"I have perfected your religion and I have completed my grace on you."

Consequently, it cannot be possible in the nature of things for another prophet to come, because if a prophet has to come at all what will he do here, when the religion has been perfected and requires nothing more to be added to it.

Shri Dharendra Nath Datta : On a point of order. We are not here, Sir, to hear a religious lecture: we are here discussing the Report of the Basic Principles Committee. I have every respect for what the Honourable Member might have to say, but we are discussing the Report and not hearing the religious lecture.

The Honourable Mr. A. K. Brohi : I am merely answering.....

Mr. President : A point of order has been raised. Yes, Mr. Dharendra Nath Dutta, what were you saying?

Shri Dharendra Nath Datta : I am not here, Sir, to hear a lecture on religion. We are here to consider the B. P. C. Report, as a political document.

Mr. Zaheeruddin Chowdhury Moazzem Hossein (Lalmia) : He is speaking on the B. P. C. Report.

Mr. President : I think some honourable members raised the point that Islamic Constitutions are not practical. Under the circumstances, I think, Mr. Brohi is giving a reply to that.

The Honourable Mr. A. K. Brohi : I would not go into the details, but I have been asked a question and I thought I must be fair to my honourable friend to give him an answer and to satisfy him. If you give him leave to ask question, then I think I am again within my right to reply to that question ; I must be fair to the honourable member. Again, I have no intention, to give offence to any one because I have been enjoined by my religion, not to hurt any one. A Muslim has to be the least offensive, and, therefore, Sir, I will close this chapter.

Let me go to another point and I must say I would not have said all this if they had not dragged Islam into controversy. You read the proceedings of this august Assembly for the clarification on that point. If my friends opposite do not accept me as their friend, then they probably will not find another man whom they can accept as such. I try to understand and meet their viewpoint more than anyone else does here.

Mr. President : Please go on to another point.

The Honourable Mr. A. K. Brohi : Now, Sir, this was the first essential. The second essential is that Islam is a religion for all. The address of the Holy Quran to all people. It says :

“ O, you people ”.

It is, therefore, a universal religion ; it is therefore, a religion which is to be followed for all time to come. It is a religion which can be practised anywhere and it involves an irreducible minimum number of restrictions which can prevent a man from professing that religion. You can even pray to God anywhere ; it is not necessary for you to pray in the mosque alone. Anywhere we can profess that religion ; its outlook is broad ; it is universal ; it can be followed for all time to come and all that it enjoins is belief in one God and in the submission to the way of the last Prophet. That is the transcendental basis of the religion. It is necessary this should be constantly kept before us because that is going to be the foundation of our law. In the modern secular sense of the term, if a question arises why should I obey the law, the answer that I will get is : “ if you do not obey the law, the forces of the State will compel you to obey it. The police will be there to see that you obey it.” The other argument can be : the law has been formulated by the general will of the people, and consequently, it is binding on you by virtue of that will. The ultimate authority in the modern State, which sanctions the validity of the law in the theory of the constitutional lawyers is that it is backed by the sovereign power. That sovereign power is the very basis of the State itself.

Now, to that extent it is all right, but if somebody were to say “ why should I obey a law passed by the majority ? What obligation do I owe even to the majority ? Where is it written that I am wrong and everybody else in the right ? Or I am in the right and everybody else in the wrong. What obligation I have got to obey the law ? ” To him, the only answer is that it is the transcendental basis of the law that it should be

obeyed and that dictum of law has been declared by God—He says in the Quran :

“*Ateeul-Laha wa atee-ur-Rasoolu wa oolil amre minkum.*”

“Obey God, obey the Prophet, and obey those who are in authority amongst you.”

Therefore, obedience to the State law is also obedience to the God's law, because it is the God's law that enjoins obedience to the State law. To that extent it is purely transcendental foundation of the law. With this there can be no quarrel so far as minorities are concerned. They have no concern with that foundation of the law. They are only to say that they are going to obey the law of the State because it was passed by the Constituent Assembly of Pakistan or any other legislature. There should be nobody to say that he is not going to obey the law because it has been passed by the Constituent Assembly or because this is a law sanctioned by the Islam, because it is the law of God or by those who are in authority amongst you. They have got to be obeyed. So, Sir, this is a mere philosophy of the law, the transcendental basis of law, which has nothing to do with the law itself in the secular sense as well as the religious sense. Consequently, so far as the practice of this ideology is concerned, minorities have not to worry about the enunciation of the foundation of law when we say that sovereignty over the entire universe belongs to God Almighty alone. They need not concern themselves with such statement. If they think in their own interest that the sovereignty instead of God lies with the Constituent Assembly, they can absolutely ignore that statement which is to be inserted in the Constitution. That is a matter with which they should not worry themselves. But supposing there were other people who say, “why should I accept even the law of the Constituent Assembly?” To them the answer can be that they have to obey that law because that law is the expression of the delegated authority, because God has ordered them to obey His law—i.e., obey Him, His Prophet and those in authority.

Then, Sir, there is another thing which is one of the essential features of our constitution. It says : “The authority which He (God) has delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him, is a sacred trust. The important expression is “within the limits prescribed by Him”. The limits are that not only the Federal Legislature which will be constituted as a result of the enactment of the Constitution, and which ordinarily is a sovereign law-making body in the sense in which the English Parliament is a sovereign law-making body, but the Provincial Legislatures also will be subject to the limits prescribed by God.

Ordinarily a parliament is a sovereign law-making body and its laws cannot be challenged on the ground of being *ultra vires*. If the English Parliament says that all the red-haired babies should be killed and a law to that effect is passed by the Parliament, then there is no other authority to challenge it. This is the law of the English Constitution : that the Parliament is sovereign and the people are bound to obey the laws passed by it, although humanity will go mad before a law of that kind could be passed. But one of the most important features of the Constitution that we are going to frame is that the legislature of the future that will be constituted will have a restricted measure of law-making capacity and its legislative powers will be determined by certain limitations and those limitations are the limitations that have been prescribed by God. The Pakistani Parliament, in other words, will not be omnipotent. Its powers will not be all-embracing and all-comprehensive, but its powers will be circumscribed by the limitations that have been specified in the Quran and Sunnah : in order

[The Honourable Mr. A. K. Brohi]

to give positive expression to this particular paragraph of the Objectives Resolution mentioned in the Basic Principles Committee Report, we have that paragraph which says that no legislature should enact any law which is repugnant to the Holy Quran and Sunnah. The competence of the legislature to enact a law is subject to limitations and barriers prescribed by God and every legislature must know that its authority is not unlimited but limited, restricted and not unrestricted. Now a certain method and technique has been prescribed in the Basic Principles Committee Report as to how the powers and the limitations of the Legislature would be determined. There has been a great deal of criticism in this House, and I agree with every single word that has been said, against the sort of technique and the method provided in the Report. The method and technique provided are that there will be a board of scholars well versed in the domain of Muslim law who shall be the *de facto* advisors of the Head of State and the units and upon their unanimous decision the Head of the State or the units, as the case may be, will transmit the Bills back to the legislature to reconsider and that the legislature will then have to see whether or not it is to accept its advice. All the criticism that has been levelled here against this methodology and technique is fully justified for the simple reason that we do not accept that any person or class of persons is competent to arrogate to himself the position of being the sole interpreter of the law of God. In the nature of things, a pretence of that type is precluded by the law of Islam. If God says: "I am nearer to you than the veins of your neck, then there is no place for the priest or any one to come in between; and to tell us that he or they alone have access to God and none else. God says to men:

"Nahno aqrabu ilaihe min hablil varid".

"We were nearer to you than the veins of your neck".

There is no place for priesthood in Islam and this type of attempt that was made to perpetuate a type of class—which has sometimes flourished here and there down the ages of the Muslim history—, about which the least is said the better. Therefore I am grateful to my friends, and particularly to my friends of the Opposition, who have denounced that outlook of those who have recommended in the B.P.C. Report the type of the formula with regard to the adjudication of the repugnancy clause.

Sir, I am here to announce that we shall be moving an amendment on the floor of the House so that the Honourable Members may consider the whole position when we go on to discuss the Report clause by clause that the ultimate adjudication power of this repugnancy clause be vested in the Supreme Court of Pakistan. It will be for our Judges in the Supreme Court, constituted with the authority of law, to interpret for all practical purposes what that law is. If the argument be once again that they are human, and that they can err, the answer to that would be that there is no other authority available to us at all. Even the law of God, as it stands revealed, has to be understood by man. It is the man who is the understander thereof. It is I and each one of us who is to understand it; because it is intended for each one of us. It came directly for man and there are Muslim scholars who say that it has to be re-revealed to each follower of the Mohammad (peace be on him). So one has to read it, re-read it carefully and comprehensively and then see what is the ultimate view to be taken of it. That is the essence of the matter. In order that one may be able to obey it, there must be finality somewhere. There must be the last word somewhere in order to silence those who might not accept that law and the highest court in this country under the Constitution being the Supreme Court

of Pakistan, it is that court which should have the privilege of being the custodian of the Constitution and just as in other matters it will interpret the Constitution, it will interpret future laws as well to see if they are repugnant to the Quran and Sunnah. The power shall be vested in that august body and our judges alone will be competent to interpret the law and pronounce judgment upon it. An amendment on those lines will be moved and I hope the other side will have no objection to it.

Shri Dhirendra Nath Datta : Mr. President ! Through you I want to put a question to the Honourable Minister of Law : " Will it affect the personal law of the Hindus ? "

The Honourable Mr. A. K. Brohi : I am coming to that point. I am not going to exclude anything. Let my friend be patient. I will satisfy him fully later on. But if he wants to hear from me here and now, I would say to my friend that we have no quarrel with the personal law of the Hindus and I will be able to tell him from the Holy Book that Islam does not allow any interference with the religious practices of any community or as a matter of that with the personal law of the Hindus. But since I want to take up this point in detail later on, I would ask my friend to allow me to continue in the way in which I am proceeding because if I were to detract from the way in which I want to go on, the whole scheme of my argument would be disturbed : no doubt it is an essential and important factor as to what will be the position of the non-Muslims in the Constitution of the State which we are going to frame and the problem will engage the attention of all concerned while evolving an Islamic Constitution. But I tell my friend only this much that he need entertain no fear. I will try my best to explain this aspect of the matter in greater detail and satisfy him.

To come back : I was saying that it is undoubtedly true that hitherto the people who have been inhabiting the sub-continent have been brought up in a way of life where the laws that have been administered have owed their orientations and their foundation to influences other than the law of God as we understand it and now that there is a desire on the part of the people of Pakistan to switch over to a new type of law, there is one thing about which we ought to be quite careful and it is this. Any sudden and switch over from the *status quo* to that type of society we are envisaging will be disastrous. Consequently, one has to be steady ; one has to proceed methodically. One has to proceed by instalments. It is, Sir, like this. Supposing I have a house and that is the only house in which I am living and the house has become old and is in parts tottering and I want to have another house built there in its place. If I order a wholesale demolition of the house, I will then have no place to take shelter. Consequently, what is desirable is that I should in advance do proper planning for putting up a new construction of my house and determine where the foundation of the rooms should be laid and which part of it should be demolished first and which part of it afterwards. In that case, I can move in the wing which is ready and then the other wing can then be demolished and the work can then be completed. This is the analogy I could think of to illustrate what I was intending to convey and this precisely is the way in which I want to build up the new structure of the State and the society. No wholesale change can be brought about in any society, all of a sudden. If we ever want to stick to the present order of things, it will not be possible for us to evolve a new society and become better and if on the other hand all of a sudden we bring about a swift and radical change, there will be so many mal-adjustments ; there will be a lot of dislocation, a lot of disorder will possibly be the ' order of the day '. Consequently one has to proceed step

[The Honourable Mr. A. K. Brohi]

by step, gradually and steadily to the goal ; the goal having been very carefully defined, we have to proceed very methodically. There should be no wholesale revolution : there has been given to us an example in the life of the Holy Prophet. The Holy Quran took more than 23 years before it could be revealed and its chapters came in response to the varying needs and circumstances. As soon as the Holy Prophet of God was confronted with a new situation, he had the appropriate revelation. Even after the Prophet once again the development of the law took place in accordance with the demands of changing conditions. With the changing conditions the genius of the Muslim people was able to evolve a system of law which was compatible with the first principles of Islam and which at the same time provided a framework for the new type of polity. The steady and gradual development of Islamic law teaches us the value of being evolutionary and not revolutionary. We cannot all of a sudden switch on to a new position because that is fraught with dangerous consequences. In the light of these ideas, there are some practical recommendations that I wish to make.

So far as the contemporary Muslim scholars are concerned, in spite of the tall talk that we have heard from them about Islam, they have given very little attention to the basic and very important problem—nobody has yet written a history of the development of the Muslim Law. I have not come across any clear historical exposition of the Muslim Law—not at least in the English language with which I claim some manner of familiarity. With the possible exception of one or two books which are merely books on elementary legal principles, I find there has been no clear enunciation of the principles of Muslim Law from the day of the Prophet right up to the present time. How has that got to be done ? That is a job of those scholars who are well versed in this domain of law. Let them apply themselves to this task, this holy task, this sacred task. May I remind the House, through you Sir, that in India, the Constituent Assembly of India passed a resolution directing that a committee be constituted to write out a history of philosophy : they claim that philosophy has had its home in India. They wanted to give a clear enunciation of the development of philosophic thought all around the world : and under Government aegis and auspices the Government of India set up an Editorial Committee presided over by no less an eminent scholar than Sir Radhakrishnan. They have been able to produce two wonderful volumes under Government patronage. So they are able to say : "Look, this is our contribution to the World." Now, if our sister country could go so far that under Government patronage it could set up a committee to write out a history of philosophy, and thus make a lasting contribution in the domain of philosophy, what has happened to us in this country that we have not as yet done our duty. Ever since the day we have been hearing this uproarious clamour regarding "Give us Islamic Constitution", not a single decent attempt—I am not talking of the numerous trumpery pamphlets which are being hurled at us daily for our consumption,—has been made by a committee of the scholars well versed in the domain of Muslim Law to present to the world a treatise showing *how we are going to deal with the specific concrete problems of law* : I mean both domestic law and the international law. The only attempt which has been made so far is by our Secretary of the Constituent Assembly who has written a book on the Administration of Muslim Law in India. But a comprehensive treatise on Islamic Law going back to the original sources until the presentday has yet to be written and I do not think in the next 10 years such a book can be written. It is a very very enormous task, and requires patience, hard work and industry and it will

take not less than 10 years for a committee of scholars to be able to produce an authentic statement regarding the development of Islamic Law. Let it not be said that I am talking through my hat. I will be able to quote to you on this question from no less, an august scholar than Allama Iqbal. But before I read to you that passage, I will show how it has practical relevance here. Now our friends have been saying : how can the law that was revealed in the 7th century be operative in the 20th century ? How and what crimes are punishable under the Holy Quran, what is the position of women, and how the doctrine of *riba* is sought to be applied to modern conditions, so on and so forth. If they are asking all this, it is not their fault : it is our fault that we have not been able to give a clear enunciation of the Islamic Law.

Now, Sir, I will read out to you from a book written by a certain non-Muslim gentleman. He has written some interesting books : one is about Pakistan. I am quoting to you from a recent translation of Iqbal's most magnificent poem entitled *Rumuz-e-Bekhudi* (The Mysteries of Selflessness). It is by Mr. Arberry. This is what he says :

"The historians of the future....."

Now, Sir, he was a non-Muslim and he did not write this book to be read out in the Constituent Assembly.

"The historian of the future, when reviewing the great events of our times, will doubtless count among the most remarkable the sudden and surprising emergence, shortly after the second world war, of an independent nation of nearly one hundred million souls, whose principal claim to nationhood was the religion professed by the great majority of its citizens. We still stand too near to the birth of Pakistan to be able fully to appreciate the significance of that dramatic, that heroic solution of the Indian problem, as it had occupied the minds of our father and grandfathers ; but even the most indifferent reader of the newspapers must by now have begun to grasp something of the impact of Pakistan's creation upon the main tendencies of world politics. Pakistan's spokesmen in the debates of the United Nations have attracted so much attention and respect, whether in their Kashmir arguments or in their championship of Moroccan or Tunisian aspirations, that it would be a singularly dull-witted observer of the international scene who would still fail to realize that this new country is destined to play a very leading part in the coming drama of the world history.

"When the future historian proposes to analyse the causes that determined and conditioned the emergence of Pakistan, he will be bound to take into account the personality and writings of a man who is regarded by some as the creator, and by many as the principal, or a principal, advocate of the creation, of that great power. Sir Mohammad Iqbal (1876-1938), described by Wilfred Carnwell Smith in his impressive *Modern Islam in India* (Gollancz, 1946) as the outstanding Muslim poet and thinker of the 'century' whose greatness 'may be measured in terms of the universal attention and veneration which he has attracted', died indeed before he could see the unexpectedly early realization of his dream of an independent nation for India's Muslim provinces ; his last years of mental and physical anguish were not relieved by the consolation of knowing that the cause for which he strove so long was so soon to triumph. But a spate of publication, issued in Pakistan hard upon the heels of its independence, hailed him as the spiritual founder of the richest and most numerous Muslim country in the world, and the emphasis of this testimony has not diminished with the intervening years."

This is the tribute which has been paid by a non-Muslim scholar of the 20th century to Pakistan and to Iqbal. Therefore in the context of the argument which I was attempting to build and which ought to receive the profoundest attention of those who are interested in the development of ideology of Islam and its workability in Pakistan ; this is, Sir, what he says. I am quoting to you, Sir, from the "Reconstruction of Religious

[The Honourable Mr. A. K. Brohi]

Thought in Islam." I wish someone could translate the book in Urdu if it has not been translated so far. I am quoting from page 163 :—

"I now proceed to see whether the history and structure of the Law of Islam indicate the possibility of any fresh interpretation of its principles. In other words, the question that I want to raise is : Is the Law of Islam capable of evolution ?"

Sir, this has been the very question that has been raised by some of my friends. This is the quotation :

"Horten, Professor of Semitic Philology at the University of Bonn, raises the same question in connexion with the Philosophy and Theology of Islam. Reviewing the work of Muslim thinkers in the sphere of purely religious thought he points out that the history of Islam may aptly be described as a gradual interaction harmony, and mutual deepening of two distinct forces, *i.e.*, the element of Aryan culture and knowledge on the one hand, and a semitic religion on the other. The Muslim has always adjusted his religious outlook to the elements of culture which he assimilated from the peoples that surrounded him. 'From 800 to 1100' says Horten, 'not less than one hundred systems of theology appeared in Islam, a fact which bears ample testimony to the elasticity of Islamic thought as well as to the ceaseless activity of our early thinkers.' Thus, in view of the revelations of a deeper study of Muslim literature and thought, this living European orientalist has been driven to the following conclusion :

'The spirit of Islam is so broad that it is practically boundless. With the exception of atheistic ideas alone it has assimilated all the attainable ideas of surrounding peoples, and given them its own peculiar direction of development.'

"The assimilative spirit of Islam is even more manifest in the sphere of law. Says Professor Hurgonje—the Dutch critic of Islam : 'When we read the history of the development of Mohammedan Law we find that on the one hand, the doctors of every age, on the slightest stimulus, condemn one another to the point of mutual accusations of heresy ; and, on the other hand, the very same people, with greater and greater unity of purpose, try to reconcile the similar quarrels of their predecessors'. These views of modern European critics of Islam to make it perfectly clear that, with the return of new life, the inner catholicity of the spirit of Islam is bound to work itself out in spite of the rigorous conservatism of our doctors. And I have no doubt that a deeper study of the enormous legal literature of Islam is sure to rid the modern critic of the superficial opinion that the Law of Islam is stationary and incapable of development. Unfortunately, the conservative 'Muslim public of this country is not yet quite ready for a critical discussion of *Fiqh*, which, if undertaken, is likely to displease most people, and raise sectarian controversies ; yet I venture to offer a few remarks on the point before us'."

And then he proceeds to analyse the course of legal development and he takes you through the whole development in a very analytic form. And here is a very remarkable passage, and that is last passage that I will cite from him :

"This brief discussion, I hope, will make it clear to you that neither in the foundational principles nor in the structure of our systems, as we find them to-day, is there anything to justify the present attitude. Equipped with penetrative thought and fresh experience the world of Islam should courageously proceed to the work of reconstruction before them. This work of reconstruction, however, has a far more serious aspect than mere adjustment in modern conditions of life. The Great European War bringing in its wake the awakening of Turkey—the element of stability in the world of Islam—as a French writer has recently described her, and the new economic experiment tried in the neighbourhood of Muslim Asia, must open our eyes to the inner meaning and destiny of Islam. Humanity needs three things to-day—a spiritual emancipation of the individual, and basic principles of a universal import directing the evolution of human society on a spiritual basis. Modern Europe has, no doubt, built idealistic systems on these lines, but experience shows that truth revealed through 'pure reason is incapable of bringing that fire of living conviction which personal revelation alone can bring.' This is the reason why pure thought has so little influenced men while religion has always elevated individuals, and transformed whole societies. The idealism of Europe never became a living factor in her life, and the result is a perverted ego seeking itself through mutually intolerant democracies whose sole function is to exploit the poor in the interest of the rich. Believe me, Europe to-day is the

greatest hindrance in the way of man's ethical advancement. The Muslim, on the other hand, is in possession of these ultimate ideas on the basis of a revelation, which, speaking from the inmost depths of life, internalizes its own apparent externality. With him the spiritual basis of life is a matter of conviction for which even the least enlightened man among us can easily lay down his life ; and in view of the basic idea of Islam that there can be no further revelation binding on man, we ought to be spiritually one of the most emancipated peoples on earth. Early Muslim emerging out of the spiritual slavery of pre-Islamic Asia were not in a position to realize the true significance of this basic idea. Let the Muslim of to-day appreciate his position, reconstruct his social life in the light of ultimate principles, and evolve, out of the hitherto partially revealed purpose of Islam, that spiritual democracy which is the ultimate aim of Islam."

Sir, even he, in the course of this discussion had to accuse the Musalmans of the love of ignoble controversy. He had to say all that to be able to prove that Islam is a dynamic religion. What has happened to the intelligentsia in this country ? Why do they not go to that Book ? It is, therefore, that I say, Sir, if you go to that Book, you will find in it not only a source of inspiration, but that you will be helped to lead your life in a manner that even the minorities will not have to point their accusing finger at you. Today they are right in urging against us that by our conduct, by our miserable conduct, we betray that we do not believe in Islam. To that extent I have sympathy with them. I have been myself saying that and everybody knows what I have been saying about it. I do not propose to take more time of this House on this question.

I now come to the review of the Basic Principles Committee Report which is really going to be the Constitution of Pakistan. Now, Sir, Constitutional Law is the basic law, the fundamental law ; every other law is derivative law : the constitutional law merely provides the *mode* and the *manner* in which the sovereign power within the State can be distributed. There is no particular magic about this "law of the constitution", it merely deals with one business and that business is the distribution of the sovereign power within the State. It declares what the principal organs of the sovereign power are and defines the relationship of those sovereign organs *inter se*. That kind of law is the real law of the constitution. All that you have been hearing from me so far about directive principles of State policy, etc., is not real constitutional law technically regarded. You may choose to say anything and call it constitutional law. You can even declare the ordinary law to be a part of your constitution. You are sovereign body and you can do anything you like. But all these matters cannot become constitutional law in the real sense of that term. The law of the constitution is merely the distribution of sovereign power within the State and historically regarded the principal organs of the state are the legislature, which makes the law, the executive which executes the law and the judiciary, which interprets the law and adjudges whether or not a law passed has been executed, or a law passed has been flouted, and proceeds to enforce consequential remedies for violation of law. It inflicts penalties on a person who violates a law and gives declarations, whether a thing is in order or not. That portion of the law which prescribes this framework is the law of constitution and I hope some of my friends will agree with me when I say that all that 'business' has nothing to do with the Quran or with the Sunnah. We do not say that everything that you find here is from the Quran ; we do not say that at all. The ideology is Quranic, the programme is Quranic, the approach is Quranic but when we get down to the business of distributing sovereign power within the State we have adopted in the B.P.C. Report a certain approach. Now the approach that has been adopted is that our future political set-up from this perspective is going to be federal in character. What do we mean by 'federal structure' ? In what precisely does the federality of a constitution consist ? There are

[The Honourable Mr. A. K. Brohi]

in practice two ways of finding this out according to the theory of the writers on constitutional law. They are the tests which have been accepted by Mr. Wheare in his "Federal Government" which is the most authoritative pronouncement on that subject. I have that book here. No there are two essential principles that must enter into federation. Since it has been alleged that our federal constitution is a fraud on federalism, and that in reality we are a unitary State, it becomes necessary to offer a critical remark or two in relation to that contention.

Now, Sir, there are two tests. The first is that a federal government is a double government and the distribution of sovereign power takes place between what may be described as a federal or the central government on the one hand and the regional or the local government on the other. This classification does not exist in a unitary state and it does not even exist in a confederation. I will show you that the word "confederation" has been very loosely used in the context of this debate. I do not think and here I speak with respect that anyone who used that word actually realised the full implications of that word when he was talking about it. Now, in a federal form of government the powers are distributed by the constitution between the federal and local governments and although each part is co-ordinate and co-exists with the other yet none of the two has a predominant voice over the exercise of sovereign power reserved to the other. There is a co-ordinate co-existence of two governments. This is the first principle of federalism. In a unitary state, there is no such sharing of power at all. In the confederation again, what happens is that the confederal government does not operate on the people; it operates on the confederating governments. If you have two federations, or if you have two governments and they want to confederate, then the confederal centre is the law-making authority but it operates on the government and not the people. There is no such thing as the exercise of sovereign confederal authority directly over the people. The loyalty of the people is to the confederating units and the confederal government is a mere league or a mere association: its sovereign authority does not descend on the life of the individual; it does not operate directly on the people. But in the federal government both the federal centre as well as the local government operate on the people directly. Now let us see if the proposed Pakistan Constitution answers that test. It does answer that test for the simple reason that you have here the federal centre which has got a legislative authority; its executive will have necessarily to be responsible to that legislative authority: it has an allotted sphere of subjects on which it will legislate and also co-ordinately with it exists another authority, and that is the regional governmental authority, which is known as provincial or local government. Now these local governments are also sovereign within their own field; their authority is also restricted to the list of subjects mentioned in the constitution: they have their own legislature and they have their own executive, which is responsible to the legislature. So the provincial field being intact under the constitution it is a simple type of federal government.

Now, it was argued that a federal government as a federal government must necessarily have the residuary powers allotted to the local governments. There was also an argument in favour of decentralization. Now this is not a correct enunciation of the principle of federalism, as I pointed out in one of my interventions when one of my friends opposite was summing up his case. Canada is a case in point, where residuary power does not belong to the Provincial Governments; there it has been concentrated in the Centre. Lord Haldane in a Privy Council case had

to say that so far as the Canadian Constitution is concerned, he did not consider it a Federal Constitution at all. But that was from another point of view, and it was that the Provincial Governments, by which the Federation of Canada was made up, did not pre-exist the coming into being of the British North America Act. That was his argument. He said that for a federation to be a federation, the provincial governments must pre-exist. They must come together, surrender a part of their sovereignty in favour of the creation of a federal authority and then the federal government should come into existence. He conceived the requisite process as not having been countenanced in Canada. He was on that account of the opinion that there was never a Federal Government in Canada. Sir, many instances can be cited either way, where the residuary powers remain with the Centre or with the Provinces. The point however is that so long as they are declared by the Constitution to lie somewhere and where they lie they remain there to be exercised in the manner prescribed, the constitution remains federal. It makes no difference where the residuary powers lie : whether with the regional government or with the federal government. This will not make in the slightest degree any difference at all.

The other point with regard to the federal nature of our Constitution is in the distribution of its subjects. It was argued, I think yesterday, with a great deal of eloquence but, I must say with all respect, with very little of logic, that if you look at the provincial field and look at the subjects that have been handed over to the Provincial Governments, you are not impressed with the fact that any substantial amount of power has been transferred to the Provinces. It was argued that Provinces were more or less like municipal boards or county councils and that they could not possibly be called or characterised as the type of Government which may co-exist within the federal pattern. I do not know from where that argument emerges ; I have never come across anything like that in any of the books that I have read on that particular subject. You will see in the distribution of the powers that the subjects which are of all-Pakistan importance—where you have to have an all-Pakistan policy to be implemented—they have been handed over to the Federal Centre. Where there are powers, the exercise of which is demanded in the interests of the advancement of provincial proclivities and tendencies—where the operation of local conditions and the appreciation of objective factors influencing those local conditions become an essential part of the state policy—those subjects have been left in the provincial field. If I took up the Lists in the B.P.C. Report I think I would be able to show to you that when you do look at the lists of subjects given there you will find that this is the principle that has been accepted.

Sir, it was argued, I think by Mr. Nurul Amin, that it would be better if we have only one Central List and hand over the rest of the subject to the Provinces. That was the scheme which indicated his approach to the solution of the constitutional problem. He was of the opinion that we should have Federal List only and anything which is not in the Federal List *ipso facto* should be deemed to be a part of the Provincial List. This has one virtue about it and that is its simplicity. It is very easy to draw up a constitution on these lines because you can find out what are the subjects of an all Pakistan importance and put them down in the list and the rest will be deemed to be transferred to the Provincial Governments. Now what Mr. Nurul Amin forgot was that he was obtaining simplicity at the cost of creating a possible deadlock in relation to the administration of several matters which had advisedly been left in the concurrent field. You will find that much of the social legislation is concentrated in the concurrent field. Now social legislation can be sponsored by provinces, because it

[The Honourable Mr. A. K. Brohi]

falls within the Concurrent List. It can also be sponsored by the Federal Legislature, which will be set up under the Constitution. The advantage of having a concurrent field precisely is this that initiative lies with any of the two governments, *i.e.*, either with the regional government or the federal government. But if you do not have this option at all, then you will be hard put to the necessity of placing social legislation somewhere and if you follow it up by putting social legislation in the federal field, you will be depriving the provinces of their right of initiative in the matter of social legislation, for which they are pre-eminently qualified, because provincial interests vary from place to place. For instance, the social justice demands for the province of Sind may be quite different from the social justice demands of the Punjab. So, if there is to be initiative, why should there not be a provision to this effect for both the governments? It is really as a result of the apprehension of these two viewpoints that Concurrent List was hammered out, although the model was taken from the Canadian Constitution. When the Government of India Act, 1935, came to be discussed, there was the same problem that was dealt with and it was a very important problem. There was one historic reason in relation to this. In the undivided India during the course of the discussion, which ultimately led to the promulgation of the Constitution Act of 1935, the Muslim League demanded more powers for the provinces, because in some provinces at least there was preponderating Muslim majority and they felt that they would be able to capture some power in the provincial Government. So far as the Congress was concerned, it demanded greater concentration of power in the Indian Legislature. So there was some sort of a tussle that went on and that is the historic reason to which I have referred, namely, that some *via media* should be found out which could be acceptable to both sides. That was one important reason which resulted in the preparation of these three lists. All the same, even now there is some advantage in retaining concurrent list. That is the only way whereby we can leave the initiative of legislation both to the Provincial Legislature as well as the Federal Legislature.

Now, take, for example, the last list, *viz.*, List III (Concurrent). The first entry is criminal law, including all matters included in the Penal Code at the commencement of the Constitution, but excluding offences against laws with respect to any of the matters specified in List I or II. Criminal law is a subject-matter of provincial legislation also. Certain subjects have been handed over to the Provinces for the purpose of exercising control over incidence of crimes in the Provinces and in the interest of smooth administration. But in matters of legislation of all-Pakistan importance normally, codification of criminal law, and its procedure etc., should be with the Federal Legislature which should enact laws, so that they may be uniform everywhere. I ask you where will Mr. Nurul Amin place those subjects like criminal law and procedure which do not find place either in the Provincial List or Federal List? If he does not place them in either of them, enormous difficulties will arise. I have just taken one item to illustrate my point.

There is one point which has occurred to me, which is very important and which must be made here in this context. Arguments have been advanced that Provincial Governments must be made as strong as possible and that more powers and more subjects should be handed over to them than is the case under the recommendation made by the Basic Principles Committee.

Mr. President : Will you be able to finish this point before 12, Mr. Brohi ?

The Honourable Mr. A. K. Brohi : No. I shall take some more time—about an hour.

Mr. President : Then I think it is better to begin on the new point.

The Honourable Mr. A. K. Brohi : Let us adjourn the House now and we meet at 6 p.m. today.

Mr. President : The House stands adjourned till 6 p.m. today.

The Assembly then adjourned till Six of the Clock in the Evening.

The Constituent Assembly of Pakistan re-assembled at Six O'Clock in the Assembly Chamber, Karachi on Friday, the 23rd October, 1953, Mr. President, the Honourable Mr. Tamizuddin Khan, in the Chair.

REPORT OF THE BASIC PRINCIPLES COMMITTEE—*contd.*

The Honourable Mr. A. K. Brohi (Sind : Muslim): Mr. President ! Sir, I was developing an important point when we rose for the interval recess and that point was that the type of the federal centre which is demanded in Pakistan must depend on the peculiar circumstances as they obtain in Pakistan. After all a given form of Government or a constitutional mould has no sanctity about it, if it merely operates as a precedent. It has to be examined on its own constitutional basis. When we are engaged on the question of drafting a constitution for a country we cannot ignore the paramount needs of that country. In order to judge the particular circumstances of a particular country we have to keep in mind its political, economico-social and moral evolution and development. Additional factors that are to be taken into consideration are the provincial proclivities and other features of the units of Federation. It is after we take stock of all these relevant factors that we can develop a suitable and feasible type of constitution for this country. Consequently the argument in the abstract that because a certain form of government or certain conception of government has been adopted somewhere it should *mutatis mutandis* be applied here in Pakistan does not hold good. I therefore wish to state some of the outstanding relevant factors which are admitted on all hands. My contention is going to be that if we appreciate the peculiar position of Pakistan then the type of government that we must prescribe in our constitution should be of a certain character. I shall plead here that we ought to have a *strong Central Government* to be able to deal adequately with the problems which are peculiar to Pakistan.

Now, Sir, the most outstanding feature is the geographical distance that separates the two "wings of Pakistan" as they have come to be termed. The fact that the means of communications at our disposal are meagre, the fact that we have not got an Air Force worth the name, the fact that our Navy has yet to be developed, the fact that direct land route to the other wing in Pakistan is out of question and the fact that a vast foreign territory intervenes between the two wings of Pakistan should not be left out of account. These are very important factors. If there had been geographical contiguity between East Pakistan and West Pakistan then the principles of decentralization of powers may have been the basis of our constitution and may have been advocated. But in order to circumvent this natural difficulty in the way of the unity of the peoples of Pakistan, the difficulty which exists in the shape of hostile distance that separates the two wings, you have no alternative but to provide for a strong central government. Then, Sir, is the question of military security. The most outstanding feature of our political life is not only our internal strength but

[The Honourable Mr. A. K. Brohi]

also at the same time we have to take due care of the fact that we are not victimized by acts of aggression by those who are around our borders. If we look at our borders on the map of India and Pakistan we shall find that our borders are not natural ; they are not made up of natural frontiers at all. There are no mountainous chains defining our borders. There are no natural rivers, there is no natural formation that separate India from Pakistan. Consequently if you want to provide safeguard for this extraordinary frontier, you must in your constitution provide adequately for military security of Pakistan. The problem of the security of Pakistan assumes a new complexion altogether and having regard to the kind of relationships, political, economic and social, that have prevailed in the past between our sister country India and ourselves we cannot easily visualize a state of self-complacency in which we can ignore these considerations. We have consequently to take this factor also into consideration.

Then, Sir, it has been very often declared the predominant proportion of the population of Pakistan hails from the Eastern Wing of Pakistan which in some way is homogeneous. East Pakistan inhabitants speak the same language and their cultural formations, language and social customs, etc., are of an identical pattern. But when you concentrate on the position as it obtains in West Pakistan you find diverse linguistic, cultural entities here. In regard to various customs and social practices that prevail here, the Sindhis, the Punjabis, the men belonging to Frontier and men belonging to Baluchistan have wide divergences to demonstrate. Consequently in order to hold all these elements together you have to have, at least for some time to come, a very powerful and strong central government, a government that would be able to cope up with, not only the natural difficulties but the other difficulties that I will presently be able to point out to you. Consequently, Sir, the problem of federalism in Pakistan has to be visualized and examined in this context and not *vis-a-vis* any abstract theory of a federal constitution. We cannot talk about some of the models that have been grafted in other countries or adopted in other federations. We have to adopt a constitution with due regard to the factors that obtain here.

Now in the light of these considerations some of the criticisms that have been made by our friend Mian Iftikharuddin from the other side may be seen. His whole speech, Sir, I have read very carefully : I also listened to it with some earnestness and attention when he was being delivered of it. His argument comes to this : that the Constituent Assembly of Pakistan as it is constituted today, having regard to its history is not in a position to give constitution to this country. If you analyse that argument further, his premises are that after all, the essential question before the peoples, the Musalmans in the undivided India, was the question of partition, *i.e.*, separation of those Muslim contiguous areas, from the areas wherein preponderating Hindu majority was to be found. That was the only question on which we addressed ourselves, *viz.* the question of partition. He seems to imply, although he did not say so in so many words, that there was no mandate, directly or indirectly, to us, *i.e.*, Constituent Assembly, to be able to frame a constitution for this country. He said, the essential question then was, 'partition or no partition' and it was on that basis that we fought and it is on that basis that the recruitment of membership to the Constituent Assembly took place. Now, in the historical sense that is not correct position at all. As the words "Constituent Assembly" denote this was essentially a body which was to give a constitution to the country that

came to be afterwards described as Pakistan. The process of constitution-making had taken place in India in early 1947. The Muslim League representatives did not participate in the Constituent Assembly of undivided India and they insisted upon a boycott. Then in the statement of 3rd June, 1947, a different position was taken up by the British Government with the result that a certain procedure was prescribed by resort to which Sind, Frontier, Punjab and Bengal had to declare their intention of constituting a separate Constituent Assembly for Pakistan. It was consequently in express compliance with that demand of the representatives of the Muslim League that the Constituent Assembly was constituted. It is true that considerable time has elapsed since that day. It is also true that the mandate technically may be deemed to have been exhausted. But we have had certain natural difficulties to grapple with. Those difficulties (and some of them were at least not of our own making at all) occasioned delay and we admit that considerable time has elapsed and no constitution has so far been framed. Now the Basic Principles Committee Report is here before the House and now to argue that because six years having intervened we should not proceed further with it and that this House should be dissolved and a new House should be constituted—and to further say that the new House alone should give a constitution, according to me, is to do injustice to the people of Pakistan and to the Constituent Assembly itself.

Then, the second argument that he urged was that the formula which has been agreed upon has been agreed upon essentially and fundamentally by the ruling clique. In the words of Mian Sahib, it is the ruling clique on the one hand and the "Suppressed community that it ruled" on the other hand he indicated in his statement here that he was of the opinion that the agreement reached by the representatives of this ruling clique will not be acceptable to the people of Pakistan.

Now, Sir, we have been all following Press reports. Such comments as have trickled down to the Press from the various representative organisations and representative leaders of the public opinion in this country, do demonstrate very clearly that so far as this formula is concerned, it has been agreed upon and accepted by all and sundry and not only by the "ruling clique." The people of Pakistan are very anxious that some sort of constitution should be given to them without any avoidable delay. Here again the essential question which Mian Sahib forgot completely is, that he thought that in framing this constitution we were saying the last word on the question. He seemed to imply that the Constitution that will be framed will be immutable, would be unchangeable and that it will not be available for amending process. Now, that is a wrong approach. All constitutions are amendable and we have some paragraphs in the B. P. C. Report itself which tell us how the Constitution, if and when it is framed in terms of these recommendations, can be amended. He could plead with some justification that the amending process is difficult; he could plead that having regard to the peculiar history of the constitution-making in this country, let us make its amending process simpler so that the new House when it assembles here can take proper stock of the situation. May be some parts of the Constitution are not acceptable to the people but that never was his argument. It was never his argument because he was not thinking on those lines at all; he was not thinking of the people of Pakistan. What is it that is worrying him then? There was something else at the back of his mind of which he was thinking but which he did not wish to disclose.

[The Honourable Mr. A. K. Brohi]

It is quite true that there was some obstacle that had come in the way of constitution-making in this country—the parity formula—which is reflected in the B. P. C. Report itself. It is true that some amount of hostility and criticism was provoked by this formula. It drew criticism from the people of Pakistan and surely, Sir, in the making of a constitution it is not wise to *impose* a constitution on the people which is not acceptable to them. The essential question here as elsewhere is the *goodwill* of the people, and their tacit and implicit consent to the proposed legislative measure. We want to frame a constitution with the consent of people. Now, Sir, in the teeth of that sharp comment that has appeared in the Press and the controversy that was raised as to the parity provision to have proceeded with the Report, would not have been practical politics at all. It would have spelled ruin and disaster in this country, and, therefore, all right-thinking men in this country heaved a sigh of relief when the leaders, accredited leaders of the public opinion in this country, agreed to the *formula*.

Now, the wisdom of that formula has been challenged. It has been said : “Is there no parity in the approved formula once again”. “Have you been able to get away from the terms of the B. P. C. formula?” Previously there was parity in each House and now of course, there is parity in both the Houses taken together”. The Lower House which is to represent members elected by the people directly will return members on the basis of population. But so far as the Upper House is concerned, you have given equal representation to all Provinces. Have you not ultimately brought in the question of parity before the House because it would be in the combined session of the two Houses that essential and vital decisions will be taken.” That has been the criticism that has been offered. Now, Sir, in the first place, is this criticism *honest*? Whether it is parity or no parity; the decisive question is, if the top leaders of public opinion in this country agreed upon a formula, that by itself is a justification that the formula is workable in this country. Whether you have parity in the two Houses as it was in the B. P. C. or you have parity in the combined Houses is neither here nor there. The question remains whether on the whole the leaders of the country have agreed to work this formula. It is my opinion that they have agreed upon it. That is why we have accepted this formula.

I see no harm if we ensure that in order to secure the effective majority, in the two Houses (that is in the combined session of the two Houses) the safety clause of 30 per cent. from either of the two Wings be included in the formula. Various criticisms have been voiced; and the most outstanding feature of these criticisms is: “Is this not a device for perpetuating the feeling of provincialism amongst the peoples of Pakistan?”. That is the argument that has been offered. After all, the people who come from West Pakistan and the people who come from East Pakistan are made to think that this clause has been incorporated in black and white in the Constitution, *viz.*, that until and unless 30 per cent. of the votes from each wing is secured, they will not be able to form a government. It has been said that intrigues will be started in the country and that the corridors of the future legislative assemblies will be reverberating with slogans of intrigues and that people will not set about doing their real business at all. In substance this is the argument that has been urged.

Now, as you look at the problem, although this 30 per cent. reservation clause was essential to secure a perfect agreement, I do sincerely

hope and pray that it will not actually come into operation; that conditions as they are now being visualised, will not materialise: and that ultimately when the new Houses of legislatures are recruited, the preponderating majority of the party in power would find that it is not worthwhile relying on this reservation. The party will see that it has not only the requisite 30 per cent. of votes from either of the wings but that it has more than 60 per cent. or 70 per cent. representatives in its fold from the other wing. This 30 per cent. reservation clause, to my mind, seems to be, and I would call it, the 18th elephant clause and I will tell you why I call it the 18th elephant clause. This is associated with a little story we read as children. There was a very rich man who had 17 elephants and when his death hour drew near, he called his three sons and said to them, "I have no property at all excepting these 17 elephants and I love them so much that I do not want you to sell any one of them. I do not want you to have any one of them slaughtered or sold and you should see that they all remain with you. All the 17 should remain intact in the family and the shares that I allot to you are half to one son; one-third to another son and one-ninth to the third son", and the man died leaving that will behind. Now, Sir, as you know, 17 cannot be divided into proportions of $1/2$, $1/3$ and $1/9$. Here was a very unprecedented and unusual problem that arose and this was the legacy that the rich man left for his children. The father had left behind no other method or hint as to how and by which arithmetic or any other science this problem was to be tackled. So, they all went to the Qazi and put the problem before him. The Qazi thought over the problem and said: "Well, I shall come in the evening and distribute the elephants." In the evening the Qazi came on his 18th elephant and put his own elephant with the 17 elephants. One man was called upon to take one-half, that became 9; another man was called upon to take up one-third, that became 6; another man was called upon to take away one-ninth that became 2. If you put them together, that would come to 17. So the Qazi took away his own elephant back; i.e., the 18th elephant was taken away. Now this 18th elephant was essential for the initial solution of the problem but it was not the material part of the process at all. But it was the Qazi's elephant without which the problem was impossible of solution. But that elephant itself did not enter into the composition of the formula. So the 30 per cent. safety clause is that 18th elephant clause without which there was no agreement and therefore no solution. Now even if you take away the 30 per cent. clause, you will be able to work parliamentary democracy in Pakistan because I am prepared to hazard a forecast for the generations unborn that they will see that *in actual practice this 30 per cent. clause will never be operative*. That is at least my prayer and hope. Then supposing it is not workable it is after all a fictitious type of reservation as I take it to be, and what is the harm, I ask, if by having this clause, whether rightly or wrongly, whether for valid or invalid, good, bad or indifferent reasons, the two wings of Pakistan are brought together. What is the harm if these checks and balances have been provided so that each one of the wings may feel that its position is safeguarded. Where is the harm in accepting this formula? How could this question otherwise be decided? Why do some of the Honourable Members then entertain this fear in their mind that if this formula is accepted, it will create disastrous effect, that it will generate intrigues, that it will spell disaster for the future of this country? If the option lies between either acceptance of this formula or no Constitution for Pakistan, then I do not think that any great mistake has been committed in bringing forward this clause

[The Honourable Mr. A. K. Brohi]

by way of safety to secure an agreement to avoid the stalemate. It was said by one of my friends, I think, Chaudhri Nazir Ahmad, that the essential question about the composition of the Federal Legislature as reflected in the formula is the question of *agreement* of the people. If people agree to it that is the best test. People have accepted it and that is the only test of the question whether the given remedy will work or not.

Mian Iftikharuddin then went on to challenge the *bona fides* of the ruling clique. He said, during these six years they were unwilling to give a constitution. Then there was the pressure of public opinion and they had to win a fresh lease of life to be able to stick to office and therefore they put their heads together and have now evolved this formula and once again they have tried to throw dust into the eyes of the people. This is just the argument which is urged for the sake of argument. There is a line from Goldsmith's "Village Schoolmaster". "Though vanquished he could argue still". And so Mian Sahib went on arguing and arguing but at least so far as I am able to see from the statement of his report he has not been able to advance his case.

Then his next argument was that so far as Provinces are concerned, we have not given them any substantial power at all. He is of the opinion that there should be decentralisation. He is of the opinion that major quantum of power should be reserved with the Provinces; he is of the opinion that 42 items that have been enumerated in Provincial List are not a substantial sum total of the powers that should have been given to the Provinces and he has enumerated some of the items like burial grounds of the dead in the Provincial List, and so on and so forth, to show that in reality the list does not give any substantial power at all to the Provinces. Now in the first place Mian Sahib should not count the entries: it is not by counting the entries that one could find out the strength of the Provincial Government because arithmetically you can divide and sub-divide a given subject-matter into hundred items if you just want to do so. All the essential things have been handed to the Provinces and in my humble opinion a very great and substantial measure of the powers has been reserved for the Provincial Governments. You find the first entry: public order, administration of justice, constitution and organisation of all courts, education, health and so on and so forth. Now, these are all substantial questions of a provincial import. It is these subjects on which the provincial genius can work. It is in these subjects that healthy legislation can take place and these are the subjects that can be handed over to the Provincial Governments to manage.

Shri Dharendra Nath Datta (East Bengal: General): What are the sources of the revenue of the Provincial Governments?

The Honourable Mr. A. K. Brohi: You will see that so far as the fiscal provisions are concerned, they have not been mentioned in this list and as I have been able to see from the history of constitution-making by this House, it appears that they are the subject-matter of a separate settlement.

But if you do look at the Government of India Act that we are working today after adapting it, by the Provisional Constitutional Order of 1947, you will find that the resources and the revenue are correlated to the powers that have been handed over to the Executive for administration. But on the other hand with respect to these subjects, I do not see that there is any vast disparity and in fact one of the suggestions

that I was going myself to make, subject to the approval of the House is that item No. 56 (Zakat) which is appearing in the Federal List should be handed over to the Provinces because they will be able to manage this subject more competently than the Centre will be able to do. Sir, my recommendation would be that item No. 27 which is in regard to ancient historical monuments should be declared to be a subject for the Provincial list. All national museums, archaeological sites, libraries : with regard to all these subjects my recommendation would be that they should be handed over to the Provincial Governments. We had lately, Sir, an instance that due to the downpour of heavy rains, some of the exhibits that had been collected from Mohenjodaro were badly damaged and the question then arose as to what was to be done. The officer there got into touch with Karachi and the usual routine of noting on files was gone through and delay was the result. It was very difficult to manage such a situation promptly. If this sort of subject had been handed over to the Provincial Government, the District Magistrate of Larkana would have been in a better position to look after this. But this is only a matter of minor adjustment.

With regard to allocation of financial resources, the present financial arrangements and adjustments which exist between the Units and the Centre *inter se* will be maintained. There is no difficulty in finding out whether Centre or the Units have proper sources of revenues to be able to administer subjects properly. The working out of a proper financial arrangements is hardly something which can be regarded as insoluble and it cannot be said that here is an obstacle which cannot be surmounted and the formula which has been agreed to by the party is on that account not a workable formula at all.

Russian Federal system has been referred to : I can tell you what is the constitutional position in regard to the distribution of subjects in the Union of Socialist Republic of Russia. It has been said by some honourable members here that there is a lot of decentralisation in the Russian Polity. It will no doubt appear from Article 17 that the power has been given to the federating republics to be able even to secede from the Union Republic. But I can tell you, Sir, what really are the subjects that have been handed over by the Centre so far as Russia is concerned. This is covered by Article 14 of the Russian Constitution. I am talking of the Constitution of 1936 (December 5). Let us see now the effect of decentralisation *vis-a-vis* the powers that have been reserved to the Centre. I will read out Article 14 and you will find that nothing substantive remains for the regional Governments to administer although a few subjects in restricted sense have been handed over to them :—

- (a) Representation of the U.S.S.R. in international relations, conclusion, ratification, and denunciation of treaties of the U.S.S.R. with other States, establishment of general procedure governing the relations of union republic with foreign states ;
- (b) Questions of war and peace ;
- (c) Admission of new republics into the U.S.S.R. ;
- (d) Control over the observance of the Constitution of the U.S.S.R. and ensuring conformity of the constitutions of the Union republics with the Constitution of the U.S.S.R. ;
- (e) Confirmation of alterations of boundaries between union republics ;

[The Honourable Mr. A. K. Brohi]

- (f) Confirmation of the formation of new territories and regions and also of new autonomous republic and autonomous regions within union republics ;
- (g) Organisation of the defence of the U.S.S.R., direction of all the armed forces of the U.S.S.R., determination of directing principles governing the organisation of the military formations of the union republics ;
- (h) Foreign trade on the basis of state monopoly ;
- (i) Safeguarding the security of the state.

This means anything and everything. The Union Republic can at any time say that such and such regional Government is not able to safeguard the security of the State and therefore they can ask them to transfer this to the U.S.S.R.

- (j) Determination of the national economic plans of the U.S.S.R. ;
- (k) Approval of the consolidated state budget of the U.S.S.R. and of the reports on its fulfilment ; determination of the taxes and revenues which go to the union, the republican, and the local budgets ;
- (l) Administration of the banks, industrial and agricultural institutions and enterprises and trading enterprises of all-union importance ;
- (m) Administration of transport and communications ;
- (n) Direction of the monetary and credit system ;
- (o) Organisation of State insurance ;
- (p) Contracting and granting of loans ;
- (q) Determination of the basic principles of land tenure and of the use of mineral wealth, forests and waters ;
- (r) Determination of the basic principles in the spheres of education and public health.

This is something which may serve as an eye-opener to the apologists of the Russian Constitution. What has happened here is that the Centre is telling the Regional Governments : " By all means conduct your educational experiments and health reforms, but we will lay down the principles. " Now, Sir, somebody should draw a line and tell us where one ends and the other begins. I shall, Sir, when I have finished up to (x), i.e., 23 items, show that nothing practically remains with the Regional Governments at all. Now, Sir, as constitutional lawyers we know that we have not to see the number of entries as they are but we have to see what is the substance of authority given to Regional Governments.

There are provisions with regard to education and public health that they be administered by Regional Government but the principles must be laid down by the Centre. What would be those principles are known only to the Centre :

To continue :

- (s) Organisation of a uniform system of national economic statistics ;
- (t) Determination of the principles of labour legislation ;
- (u) Legislation concerning the judicial system and judicial procedure ; criminal and civil codes ;

- (v) Legislation concerning union citizenship ; legislation concerning rights of foreigners ;
- (w) Determination of the basic principles of legislation concerning marriage and the family ;
- (x) Issuing of all-union acts of amnesty.

After having written off everything, you can triumphantly turn round to the Regional Governments and say "The rest you can take." An argument has been advanced in this august House that the residuary powers should go to the Provinces. What is the good of handing over the residuary powers after expressly taking away everything. If you apply your mind to these 23 articles, you will come to the conclusion that there is nothing substantial which has been handed over to the Regional Government. Anything can be grabbed, anything can be administered and the matter is entirely left with the Central Government. Then what is this talk of decentralisation under the inspiration of that Constitution ? It is true that under article 17, power has been reserved to the Regional Government to secede. The States forming the Union know that they are face to face against the rest of the capitalist world. Even if the Regional Governments are so minded as to secede from Russia where will they go to ? It is something like this. You can tell your son : "Look here, you are at perfect liberty to leave the house. But when you leave the house all your clothes will be taken away and I will see to it that you are not admitted to any other house." You are giving good measure of freedom to your son by giving him this type of choice.

We have also heard from Mian Iftikharuddin a very brilliant and eloquent address in support of the contention that industry in East Pakistan can be easily managed by the people of East Pakistan. It is a heartening statement to make. But who is conducting the affairs of Government here ? Is it not the Government of Pakistan that is managing the industries here ? If it is done at the Centre, you have the whole country to back a certain type of industry. But if you do it piecemeal, you land in disaster. Piecemeal industrial development is not practised anywhere. Today everywhere the talk is going on of integration, and more integration. But here you are talking of disintegration and more disintegration. This sort of sentimental speech from a person of the eminence and stature of Mian Iftikharuddin will be a good election speech in East Bengal. They will say : "This man is talking sense." But before sober citizens sitting here who take stock of the whole situation, the logic of it is so hollow that I do not think it requires any further argument to demonstrate that decentralisation will not be in the interest of Pakistan and that this subject should be handed over to East Pakistan.

As he was intent on provoking some manner of controversy about the Report he could not refrain from raising the language issue. Now you know, Sir, that the language issue is not before us. A statement on that question has been made by Mr. Nurul Amin already. It is for this House or the succeeding House to say what should be the State language or languages of Pakistan. Already immense harm has been done by a loose talk over this issue. I therefore do not at present propose to enter into the discussion of this question. Bengali is as good a language as Urdu. Those who speak Bengali or Urdu are brothers. It is purely a domestic affair and they will settle it between themselves. The Honourable Member could not prevent himself at the cost of being irrelevant on speaking on this issue. I have my views on this question but we are not called upon to express them here at this moment.

[The Honourable Mr. A. K. Brohi]

Thus, the entire criticism that has been made in relation to the acceptance of the formula *vis-a-vis* the position of the Federal Legislature will not bear much examination. On the very first day when our Leader of the House, the Prime Minister read out his introductory speech, Mian Iftikharuddin got up and remarked on the pretentious character of this formula. He emphasised this by giving an illustration of an ailing person in the hospital where an American Ambulance car comes with a view to carrying him from that particular place to some place elsewhere. Illustration is no doubt given to illustrate but it does not exhaust the scope of argument. The two are quite different. The question here is not the question of a patient. Here it is the question of constitution and that constitution can only be expressed by the general will of the people. Supposing the formula turns out as something unworkable tomorrow, nothing would prevent us or the posterity from altering it if the wisdom of those who are to succeed tells them that what we have done should be undone. There is nothing to prevent them from doing so. They can, by resort to amending process, alter it to something better. I have attempted to give an explanation that the formula and have said that it is an act of wisdom, that it provides against a certain sort of mistrust and distrust that had come to subsist between the representatives of East and West Pakistan. A great deal of difference between the two wings has been resolved by its adoption.

There is one more point and it is this. An argument has been raised "Why have two Houses". I think all the ingenuity and subtlety of Opposition Members was wasted on fighting against this truism, *viz.*, that in Federation you should necessarily have two Houses. I am not a believer in a set formula. I believe that formula is best which works best. I would like to subject every formula to a pragmatic test : to what extent is this formula conducive to the welfare and progress of Pakistan. That is the only criterion, the only test.

I shall attempt to show that it is an essential feature of federalism that it should have two Houses. In the Lower House, you have the people's representatives. They represent the people on population basis. You have to determine how many should represent the 76 million people in Pakistan. So far as the Upper House is concerned, it is more than necessary in a federation for the simple reason that the federating entities are not the people but the Units. Who federate ? Not the people but the Units. We all know that the Province of Sind passed a Resolution to be included in Pakistan ; a referendum was held in Frontier and in Sylhet and they got integrated with Pakistan. Similarly Baluchistan, Punjab and Bengal. So we see that these are the units which are trying to federate. In a federation, how can you allow one Unit which has a preponderance of population to overweigh and overawe another unit. There has to be equality of representation in the Upper House. This is not an isolated instance. It is a well known procedure. In America you have equality of representation of various units in the Upper House and such is the case with Switzerland. Although in Canada, they have two Houses where representation is not on equality basis, but that difference rests on entirely different consideration. Consequently, acceptance of the Upper House on the basis of equality was demanded by the federal idea. You could have some sort of federation even with one chamber. You could have had anything. But if you have two Houses, the Lower House is to reflect the wishes of the people, while the Upper House is to represent the will of the Units. Now it is said why then equality of power ? Is not the Lower House more

democratic? Why not name it as the People's House? Now, Sir, this argument begs the question. We did not wish merely to have representatives of the people, sitting in the Lower House and framing legislation, but we want a declaration from the Upper House, representing the different Units, whether or not the proposed legislation is in conformity with their specialised interests. It is not what the Upper House can do, but it is the feeling in the minds of the representatives of the Lower House as to what can be said about a legislation in the Upper House that is important. In fact, it acts as a break. So, Sir, that is a very essential feature of the proposed constitution.

Then there is yet another point of view. To have two Houses has one advantage. A legislation may have been rushed through under the pressure of events, under the impact of emergency in the Lower House which is a reflex of liberal public opinion. So there must be an Upper House to bear carefully upon the problems involved. If there is only one House, a certain legislation may be rushed through, say within ten days' time. But if you have the Upper House, it acts in some manner as a break, and lets the proposed legislation be properly considered.

Sir, the Lower House will be elected on adult franchise basis. We know the literacy percentage in Pakistan. We are a backward nation so far as education is concerned. Our education ratio is deplorably low. With the percentage of literacy as we have in Pakistan, if you go to the polls, the people will return irresponsible representatives who would serve to reflect, not the interests of the people but some other specialised interests; sometimes it is the landlords' interest, sometimes it is the spiritual interest of a spiritual *guru* or a guide. On the other hand, in the Upper House you will have representatives of high intellectual calibre who could be expected to bring to bear upon any proposed legislation that earnest attention which is demanded and that realistic approach and guidance which is needed. So, Sir, their guidance and their direction will be of immense value to the Lower House which will be elected on adult franchise basis. Sir, it is all right to talk of democracy. We have heard so much of that yesterday from Mian Sahib. But if the people are not well educated; and you have not educated them; an appeal to them is to appeal to whom? It has been rightly said a man without education is an animal; a two-legged animal. It is true that the will of the people has to prevail in a democracy, but you have to create people, to train them to act intelligently in the matter. In England and other democratic countries, there is healthy public opinion. There is an intelligent middle class who understand things. Even a cab-driver in England can read *Times* and acquaint himself with the ideas of Mr. Churchill. But here in Pakistan we do not have these resources, and we do not have that education.

Economically, the masses have not liberated themselves yet, so how can we expect intelligent participation by them in the democratic process which goes to make democracy a workable form of government in the modern times? To make them fit for that, opportunities have yet to be provided and after six years we are nowhere near that goal. To hand over the whole job of manning the state to the Lower House which will be composed of representatives elected through adult franchise is I say not wise: that would be just doing the thing which our enemies want us to do. Even from that point of view it is absolutely essential to have an Upper House.

[The Honourable Mr. A. K. Brohi]

The last argument was that having two Houses would be a drain on the financial exchequer ; you will be wasting a lot of money over this Upper House ; so why have it ? If matters were decided purely on the financial plane—at the altar of finance—then I think we shall be elsewhere and not here at all. It is hardly relevant to the point for which I have been trying to give an answer. This is all that I can say ; that it is inherent in the scheme of federalism, a form of government envisaged by the B. P. C. that the existence of an Upper House should be provided for.

There is one constructive suggestion which I am making to the House and I beg and I pray that this suggestion should be considered seriously, not because it emanates from me—I am too small and humble a man to claim any attention from anyone here—but it is because the best brains who have thought about this problem have seen the wisdom of it, and it is this. Sir, so far as the Upper House is concerned, it has the representation that has been given to it from the Units. If you take my advice and can expand it in some way I would insist that the professional interests should be represented there. You can have the representation of the Medical Faculty of Pakistan, you can have the representation of the Legal Faculty of Pakistan, Commerce, Labour, Trade and all kinds of other cognate specialised interests. Experts, men who have a specialised aptitude for giving to the problem of working modern governmental machine could be collected in the Upper House. If we can provide a mechanism whereby some of these representatives can come and sit in the House, the active co-operation of those representatives, who will represent these specialised interests, will be of immense utility to the House when they proceed to deliberate upon a certain legislative measure of a technical character. But supposing this is thought to be something which is not possible, something which will interfere with the formula we have agreed upon, then at least constitute a social parliament—a social advisory council—to assist both the Lower House as well as the Upper House by giving to them expert information on the problems they are called upon to deal with. Now, Sir, under the existing arrangements modern finance, modern banking, modern commercial transactions, international trade, its trends and cross-trends, formulation of international policies, etc. are handed over to individuals who are sitting as Ministers in the Cabinet. These problems do go before the Cabinet for its decisions—a Cabinet after all is a committee of politicians ; they do their best—I am not here commenting upon their competence or incompetence—but would it not be better—infinitely better—if in relation to all these problems expert advice is forthcoming to the Legislature itself so that as and when any piece of legislation is being sponsored, the pros and cons of every legislation in regard to expert information may be forthcoming from those representative interests, and may be available to the House. In the total absence of this expert advice and information legislation becomes lopsided. It becomes tendentious and gets misdirected, with the result that afterwards we often have to say “O this was not the type of legislation that we wanted to be sponsored”. Take the question of non-devaluation. Now you cannot decide that question either by inspiration or over a cup of tea in a spirit of light-heartedness. You cannot decide by just looking at the sky and saying it is a fine day, let us decide it like this. You have to consider certain factors ; you have to depend upon statistical material and data to decide as to what should be done ; you have to carefully study all the relevant fiscal matters, and unless you have expert knowledge and informa-

tion placed at your disposal it would be very very difficult to decide that question. The difficulty is that in modern Governments everywhere there are experts to advise the Legislature as well as the Executive in the discharge of their duties and modern Government is tending to become a very complex phenomenon. It is not as easy as it was, say, 200 years ago, when even an ordinary king who did not know how to sign his name even, was yet able to carry on his administration successfully. The world is getting more and more complicated and it is in relation to the complication that is setting in the governmental structure, its operations and duties that it becomes absolutely essential to obtain expert, competent, professional advice in all matters whether it is law, whether it is medicine, whether it is labour, commerce, finance, banking, or even your canal water dispute, and so on and so forth. And today who are our advisers? It is some obscure secretary sitting somewhere. The secretary however brilliant he may be, is not all-knowing and wise. He may have been transferred from one Ministry to another all of a sudden and is afterwards called upon to advise on questions he may not know anything about. The Minister tries to do his best but the result is that there is total lack of policy, there is no proper orientation of policy. Therefore I think that if, at least, in the coming Constitution we can provide by a legislative process against the contingency of the type about which I have been talking to you, by giving to legislature a sort of advisory council, or standing advisory council of experts who are representatives either of the faculties that I have named or others that can be thought of, I think that our legislation will not be incongruous or impracticable and our Government will be spared the necessity of having to face hostile public criticism in regard to any false decisions which might otherwise in the absence of such advice be taken. This idea of a social parliament was sponsored by Sydney and Beatrice Webb in their constitutional proposals round about 1926 and it has been argued and re-argued and in England ever since *de facto* there is an acceptance of this idea everywhere. Anyway I put it forward for consideration by the House for what it is worth.

There is one more comment that I would like to make and that is about the question on which some of my friends opposite spoke—I will not call them members of Opposition because I think that is not a correct term. They are the members of the Constituent Assembly and I myself started by saying that we are all engaged in a common endeavour to co-operate so that a proper constitution for the people of Pakistan can be hammered out. I am not one of those who would accuse them of doing the job in an undesirable way. I am of the opinion that they are doing their honest best; I am of the opinion that they are engaged in giving us their co-operation; I am of the opinion that they are loyal, patriotic people of Pakistan; I am of the opinion that they want to live with us: I am of the opinion that by sharing with us the duty of carrying on the government of this country we will be the better for their participation and I am of the opinion that we should show our largeheartedness, our catholicity (an attitude which is demanded by our faith, about which we talk so much), by telling them that they are our brothers—elder brothers, if you like—who are ready to help us and we want to be enriched by their co-operation. These are the ideas which have been uppermost in my mind and I would like to repeat them that they are an asset to Pakistan. I note however that they needlessly go on repeating a statement that the Quaid-i-Azam made that so far as they are concerned they are Pakistanis, they have loyalties to the State and that they have to play a very honourable role in Pakistan. Why do they go on repeating

[The Honourable Mr. A. K. Brohi]

this ? Probably because they get evidence of the fact that we do not want to honour these pledges. I have talked to some of the most intellectual, intelligent class of our society in Pakistan and I can assure my brothers sitting opposite that we respect them, we honour them, we are fond of them, we want them to be with us and trust us and I hope in time to come what I have said will stand so much implemented that I will not be accused of having made such an exaggerated statement. It is in the context of the feeling that I have about these affairs that I now approach the important question in which the Members on the Benches opposite are interested, and that is the question of separate electorates.

Sir, in the first place let us be clear about the issue, not that I want to give any clear cut and dried conclusion which is to be followed for all time to come. I have no such intention. I have not got a formula which is a panacea for all the troubles of which they complain or a formula which will be acceptable. But let us think clearly about the problem and see what its ramifications are, what its implications are, so that at least a way is paved for a better understanding to prevail between us and our friends who want separate electorates, a thing which has been denied to them in the recommendations of the Report.

Shri Dharendra Nath Datta : "Joint" electorate.

The Honourable Mr. A. K. Brohi : This word has been on my nerves. So I am using it more often than you do. I think that is the explanation. I am sorry if I did not use the proper word : I should have said "joint electorate."

Now, Sir, I want to place the whole issue before you and I beg of this House, through you, to consider it. I want to read out to you a passage from one of the most objective statements on the problem of separate electorate and joint electorate controversy in India, a statement given by Dr. B. R. Ambedkar. This document is known as "The States and Minorities : What are their rights and how to secure them in the Constitution of Free India." There this problem presented itself, and this is what he says :

"First to all, to give you the history of the problem, the method of election to the seats allotted to the Scheduled Castes as set out in clauses (2) to (4) of the Poona Pact, provided for two elections : (1) primary election, and (2) final election."

This was made when the existing Constitution of India was yet in the offing. It is 1947 publication.

Shri Dharendra Nath Datta : What is the month ?

The Honourable Mr. A. K. Brohi : The month is not mentioned here. Probably because the author did not know that it would be cited in the Constituent Assembly and a question would be asked. Remember I am talking of the general principles. I want to throw the whole problem into a bold relief so that its constitutional implications be grasped. I have no solution. I wish I had. So, to repeat there were to be two phases : first was primary election and the second was final election. The primary election was by a separate electorate of the Scheduled Castes. It was only a qualifying election and it determined as to who was entitled to stand in the final election on behalf of the Scheduled Castes. For those seats both Caste Hindus and the Scheduled Castes could vote and the final result was determined by their joint vote. To that extent the separate electorate was conceded in the Poona Pact. That was a compromise formula which was followed in the Poona Pact.

Then I go on to paragraph 6 on page 45 and I hope that the House will consider it. The grounds which are generally urged against the demand of the Scheduled Castes for separate electorates are : (As you know, in India the Scheduled Castes demanded separate electorate and the majority party, i.e., Congress, resisted it. Now the author is analysing the arguments here).

Shri Dharendra Nath Datta : India, after partition, did not demand separate electorate.

The Honourable Mr. A. K. Brohi : I think my friend is more impatient than he should be. I am stating a few facts from this printed book here. I am concerned with the principles ; I am not concerned with the fact as to what happened in India. I am not a writer on Indian History. My friend probably knows more than I do. I am dealing with the principles and the principles are to be followed in the context of any controversy. Let us see the arguments for and against it. The grounds which are generally urged against the demand of the Scheduled Castes for separate electorates are :—

- (i) that the Scheduled Castes are not a minority ;
- (ii) that the Scheduled Castes are Hindus and therefore they cannot have separate electorates ;
- (iii) that separate electorates will perpetuate untouchability ;
- (iv) that separate electorates are anti-national ; and
- (v) that separate electorates enable British Imperialism to influence the communities having separate electorates to act against the interests of the country.

Are these arguments valid ? We take the arguments one by one :—

“(I) To say that the Scheduled Castes are not a minority is to misunderstand the meaning of the word ‘minority’. Separation in religion is not the only test of a minority. Nor is it a good and efficient test. Social discrimination constitutes the real test for determining whether a social group is or is not a minority. Even Mr. Gandhi thought it logical and practical to adopt this test in preference to that of religious separation. Following this test, Mr. Gandhi in an editorial under the heading “The Fiction of Majority” in the *Harijan*, dated the 21st October, 1939, has given his opinion that the Scheduled Castes are the only real minority in India. That disposes of the first argument.

“The second argument is : To argue that the Scheduled Castes are Hindus and therefore cannot demand separate electorates is to put the same argument in a different form. To make religious affiliation the determining factor for constitutional safeguards is to overlook the fact that the religious affiliation may be accompanied by an intense degree of social separation and discrimination. The belief that separate electorates go with separation in religion arises from the fact that those minorities who have been given separate electorates happen to be religious minorities. This, however, is not correct. Muslims are given separate electorates not because they are different from Hindus in point of religion. They are given separate electorates because—and this is the fundamental fact—the social relations between the Hindus and the Musalmans are marked by social discrimination. To put the point in a somewhat different manner, the nature of the electorates is determined not by reference to religion but by reference to social considerations. That it is social consideration and not religious affiliation or disaffiliation which is accepted

[The Honourable Mr. A. K. Brohi]

as the basis of determining the nature of the electorates is best illustrated by the arrangements made under the Government of India Act, 1935, for the Christian community in India. The Christian community is divided into three sections—Europeans, Anglo-Indians and Indian Christians. In spite of the fact that they all belong to the same religion each section has a separate electorate. This shows that what is decisive is not religious affiliation but social separation. This takes us to the third argument.

“To urge that separate electorates prevent solidarity between the untouchables and the caste Hindus is the result of confused thinking. Elections take place once in five years. Assuming there were joint electorates, it is difficult to understand how social solidarity between the Hindus and the untouchables can be promoted by their devoting one day for voting together when out of the rest of the five years they are leading severally separate lives? Similarly, assuming that there were separate electorates it is difficult to understand how one day devoted to separate voting in the course of five years can make far greater separation than what already exists? Or contrarywise, how can one day in five years devoted to separate voting prevent those who wish to work for their union from carrying out their purposes. To make it concrete, how can separate electorate for the untouchables prevent inter-marriage or inter-dining being introduced between them and the Hindus? It is therefore futile to say that separate electorates for the untouchables will perpetuate separation between them and the Hindus”. He does not admit that argument.

“The next argument is: ‘To insist that separate electorates create anti-national spirit is contrary to experience. That was one of the arguments that was made from the other side. But no one can say that the Sikhs are anti-national. The Sikhs have separate electorates. The Muslims have had separate electorates right from 1909. Mr. Jinnah had been elected by separate electorates. Yet, Mr. Jinnah was the apostle of Indian Nationalism up to 1935. The Indian Christians have separate electorate. Nonetheless a good lot of them have shown their partiality to the Congress if they have not been actually returned on the Congress ticket. Obviously, nationalism and anti-nationalism have nothing to do with the electoral system. They are the result of extra-electoral forces.

“This argument has no force. It is nothing but escapism. Be that as it may, with free India any objection to separate electorates on such a ground must vanish.

“The reason why the arguments advanced by the opponents of separate electorates do not stand the scrutiny of logic and experience is due entirely to the fact that their approach to the subject is fundamentally wrong. It is wrong in two aspects:

(i) They fail to realise that the system of electorates has nothing to do with the religious nexus or communal nexus. It is nothing but a mechanism to enable a minority to return its true representative to the legislature. Being a mechanism for the protection of a minority it follows that whether the electorate should be joint or separate must be left to be determined by the minority.”

This is important. I have to repeat it. In the first place separate electorate is to be conceded to the minority in order to enable the minority to return their best representative. But since it is a guarantee for the minority against the majority it is for the minority to see whether they want it or not. That is important.

Shri Dhirendra Nath Datta : Yes.

The Honourable Mr. A. K. Brohi : When it suits you, you say "yes". There is no other point which suits you.

The second aspect is :

"They fail to make any distinction between the demand for separate electorates by a majority community and a similar demand made by a minority community. A majority community has no right to demand separate electorates. The reason is simple. A right by a majority community to demand separate electorates is tantamount to a right to establish the community without the consent of the minority. This is contrary to the well-established doctrine of democracy that government must be with the consent of the governed. No such evil consequence follows from the opposite principle, namely that a minority community is entitled to determine the nature of the electorates suited to its interests, because there is no possibility of the minority being placed in a position to govern the majority.

"The correct attitude towards the whole question rests on the following axioms : (1) The system of electorates being a device for the protection of the minority, the issue whether the electoral system should be the joint electorate or separate electorate must be left to the wishes of the minority. If it is large enough to influence the majority it will choose joint electorates. If it is too small for the purpose, it will prefer separate electorates for fear of being submerged. (2) The majority, being in a position to rule, can have no voice in the determination of the system of electorates. If the minority wants joint electorates, the majority must submit itself to joint electorates. If the minority decides to have separate electorates for itself the majority cannot refuse to grant them. In other words, the majority must look to the decision of the minority and abide by it."

These are the principles. I agree whole-heartedly with these principles and there is not one speech that has been made in this House which disputed that position. The whole debate that has proceeded against the demand of joint electorate has centred round the argument that the overwhelming demand of the people is that they do not want joint electorates but separate electorates. That has been the only argument that has been advanced. No one has said that even if we are satisfied that all the minorities want joint electorates, we would not give it to them. That has never been said. There has arisen confusion over the issue. The Honourable members sitting opposite assert that it is the wish of the people to have joint electorates. The argument against it has been that it appears to us that what you say is not in accord with what the people think. A lot of cuttings have been read out and a lot of statements and counter-statements have been made. I am not in a position to give a verdict on the factual position—whether the minorities want to have separate electorate or joint electorate.

Mr. Bhupendra Kumar Datta : Have a referendum.

The Honourable Mr. A. K. Brohi : Hear me through please. I am not the law-giver of this country and the ordering of a referendum is not within my power. All the issues have to be decided by the Constituent Assembly. There is no Treasury Bench in the Constituent Assembly as somebody pointed out. Here I am only assisting to the best of my ability by offering my views and inviting judgment on the basis of justice which

[The Honourable Mr. A. K. Brohi]

is the foundation on which the Constitution must be based. I have no conclusions to offer, but let me do a little bit of clear thinking for the House. As I submitted before this there is nothing sacrosanct about this constitution. It is not immutable or something eternal. There is not a section in it that cannot be knocked off by the coming generations. The utmost that can be said is to allow us to work the present recommendations and let the new House, when it is constituted, re-examine the whole position.

(Interruptions)

I wish I were not interrupted. I am your best friend. Please allow me to show my friendliness to you. As I proceed you will notice that mine is the best suggestion that can now be made in your interest.

I submit that what I am suggesting is in my individual capacity ; as a single isolated person and not as the Law Minister of the Government. Let there be no misunderstanding about that. I am making the suggestions in my personal capacity according to my views on this problem.

I say it is wisdom and prudence to work these recommendations. When the new House is about to be constituted at the time of elections you can make the demand for joint electorates as a part of your election manifesto, and on that the verdict will be given by the people. And when members are returned on that basis, at that time one could get up and make a demand for joint electorate. You can say : " We told you we wanted joint electorates ! Here is our demand. What have you to say now ? " And I have full faith in the sense of justice of my people ; in the sagacity, wisdom and the conscience of the people duly represented here and in the future House—Lower and Upper—and I am sure they will concede to the constitution of a commission to go into the general question whether this particular constitutional provision should or should not be amended. I am not a judge of the situation. Till the other day I was plodding in law courts and was going about my business there. I have not had till lately any political experience. I have not been even a regular reader of newspapers. I used to avoid reading newspapers as I thought by reading newspapers one makes oneself miserable..... I argued within myself why read newspapers ? I developed a philosophy of escapism. Now that I have been involved in this whirlpool of practical politics I just go through the newspapers as maker of duty. Therefore is it that I say I have no answer to give on the factual aspect of the assertions and counter-assertion made in the House. I wish I knew the facts. I pray to God to give me light. Considering what has been said by my Muslim friends is not wrong, let us see how best we can deal with this question. I am suggesting a method by resort to which you can become most effective in the counsels of the country. Go to the electorate under the new constitution and obtaining a mandate, get returned and then nobody will oppose you. I do not think I can proceed any further with that point. I have no data and no statistics. I concede, as Mr. Ambedkar has remarked, and everyone here should think likewise, that if we could be satisfied that the *minorities want joint electorates, they must be given that*. But mind you, there will be no reservation of seats. That will be disastrous. I am not in favour of joint electorates with reservation of seats. If it is joint, it is joint. That is the end of it. But I am not clear on the issue whether or not the minorities in this country want it and whether or not you as representatives of the minorities, have got an express mandate to make this demand. I would like to leave this problem here.

In principle, of course, if the minorities want to merge, we are willing to accept them and embrace them. We will keep together in Pakistan. The country belongs as much to you as to us. It is true that we have different faiths and let us stick to the different faiths but in the matters that affect the State we would like you to participate in the governmental activities. Precisely you are as much entitled to be here as we.

One argument—which was a sentimental argument—was advanced from this side. The argument was that the Muslim League has been pledged to separate electorates because the Muslim League wanted it in the past. I do not think that it was a correct argument. I do not think that argument to be valid. What is good for the gander is good for the goose is not always true. If they do not want it, that is the end of it and we cannot impose it on them. That would not be justice.

That concludes all the questions that arose on the federal structure of the government. Now there are one or two specific proposals which I want to place before the House. The first proposal deals with paragraph 16 of the B. P. C. Report. It is provided that the term of office of the Head of the State should be *five* years from the date of his assumption of office. I would humbly suggest that this term should be slightly longer than the term of the legislature for the simple reason that in a parliamentary form of government when the House gets dissolved as a result of the afflux of time and the country has to face elections on the conclusion of the term of the legislature, some time must elapse. If several million people of this country are to go to polls on the basis of adult franchise there will necessarily elapse a considerable amount of time in the preparation of electoral rolls. In the meantime if the period of President's term of office also expires, that would lead to complications. So, let the Head of the State continue for six years. Let the House be constituted at the end of term of office of the Head of the State. I plead for a slightly longer term of office of the Head of the State. Let us say 5½ years, if 6 years is deemed to be too much in relation to the point I am making.

I now advert to the formula presented to this House and shall endeavour to meet the points raised by Prof. Raj Kumar Chakraverty. He said that the formula suffers from a disadvantage in that it provides for Prime Minister of the House being from one wing and the President being from another wing. He argued, saying, supposing there is a failure of the government and then another government which is formed is captained by a representative of the same wing from which the President has been elected, the position would be very difficult. He further said that such a position would lead to chaos. I tell him that that is an inaccurate appreciation of the relevant paragraph in the formula. The position is that it is only *at the time of the election of the President that you have to say that he should not be from the zone from which the Prime Minister came*. It is only at that material time that the question will be to which zone the President belongs—whether to Western Pakistan or to Eastern Pakistan. It is at the time of election and not during his continuance as a President that this consideration will arise. The question is not that if a Prime Minister comes from one wing the President should always come from the other wing. That is not the formula. Sir. The formula is that if during the pendency of a Prime Minister who happens to hail from a particular wing, there occurs the *election* of the President, then the question will be considered whether or not he belongs to the other wing. That I hope will answer the point.

[The Honourable Mr. A. K. Brohi]

There is one more specific proposal which I would like to make for the consideration of the House regarding the B. P. C. Report. I am talking of paragraph 23. It has been said here that the following powers should be exercised by the Head of the State in his discretion—(a) powers of clemency throughout Pakistan where the exercise of these powers is not forbidden by the Holy Quran and the Sunnah; (b) appointment of the Election Commission and Election Tribunals. With regard to the first, Sir, I am not in favour of power being vested in the Head of the State to be exercised by him in *his discretion*... This must be controlled by advice. Power of clemency is not merely power to commute death sentences into sentence of transportation for life. In fact it is the last remedy in criminal cases when in the normal course courts have pronounced their judgment refusing to interfere with the sentence passed against an offender. It may be exercised under section 401 of the Code of Criminal Procedure after all other remedies have been exhausted. After this you make a petition under this section to the Government and you are at times able to obtain commutation or remission. So that is the power contemplated here and I do not understand why this power should be handed over to the Head of the State especially when in the provincial field so far as the Governor is concerned you have given him no such power at all. Now it is a very anomalous position according to me. Public Order is in List No. II, i.e., Provincial List. The crimes and question of administration of criminal justice is essentially a provincial subject. If there is to be provincial autonomy then the power of commutation of sentences or of clemency which are part of the same process should be with the Provincial Governor. Why should not the Governor and the Head of the State have identical powers? Why are you going to reserve these powers only for the Head of the State? Why this preference in favour of the Federal Government? Why should we not provide the same powers for the Governor in Province? I am opposed to this on two principles.. First power of clemency should be both with the Province as well as with the Centre, and that is the existing arrangement. If we do not have it that way we shall be running completely counter to the very elementary principle of administration. The units should have autonomy in the administration of criminal law. Administration of criminal law and public order are essentially and primarily provincial subjects. You must give power to the unit in this respect. If it be argued that in a Muslim state it is only the Head of the State who is able to exercise this power, then with all respect I beg to state that the Head of the State has surrendered all his powers to his ministers and very little of it remains with him. If all those important powers are to be exercised by the Prime Minister and his Cabinet then there is no reason why the power of clemency is not being handed over to the Central Government. In fact it is a misnomer to talk of the Head of the State in the real sense of the term and apply it to a mere figurehead. He is only a constitutional figurehead. Let us get rid of the child-like habit of running after names. The word 'head of the state' even substantially considered is a misnomer. He is neither head nor the tail of the state. He has no powers in the constitution that you propose to make as in the B. P. C. Report you give all the powers to the Ministers except two powers, clemency and holding of elections. I am in favour of the recommendation of holding of elections to be exercised in his discretion. I think the management of elections, in the fitness of things, should be exercised by the Head of the State in his discretion. But in the substantive sense of the term and in the domain of law according to the constitution which we

are evolving it is a misnomer to call him the Head of the State. He is only there for '*Nam ke waste*'. He is there for ceremonial purposes. He may call people to dinner or lunch and you and I may go and dine with him or shake hands with him and so on and so forth but he has no real power in the constitution. His position is that of a figurehead, as much and as little as that of the King in England. He has no power at all. I submit, Sir, clemency is a very extraordinary power and the exercise of that power should be handed over to the Provinces as well as to the Centre. In any case I am plainly opposed to this power being exercised by the Head of the State in his discretion; especially when there is the provision that he should not exercise that power when it is forbidden by the Quran and Sunnah. When we elect the President are we to suppose that he will be an authority on the Holy Quran and Sunnah and he would know as to what is according to the Holy Quran and Sunnah and what is not according to the Holy Quran and Sunnah. When you have removed all his powers why give this power to him in his discretion especially when it is to be controlled by the Quran and Sunnah? I think in the proposed constitutional set-up, these powers should be exercised by the Provinces as well as the Centre and power of clemency should not be vested exclusively in the Head of the State. I am in favour of the second recommendation being kept as it is, because it is essential that elections should be fairly and squarely held. There is a great deal of abuse of the process of election in most of the democracies and as far as possible the power to hold election be taken away from the clutches of party politics. To expect that the government which is in power and which is a party government would fairly and impartially conduct the elections is to become unduly optimistic. To that extent I agree that the second recommendation that the Head of the State should appoint election commission, etc., should be left to stand. In fact there will be only a caretaker government as the government then existing might have resigned and therefore elections should take place in terms of the recommendation of the B. P. C. Report. It is really wise and imperative, in fact the only thing to be done, that this recommendation should be maintained. The previous recommendation about clemency militates against the basic concept of the constitution that we are framing here.

An argument may be advanced that in Islamic State only the Head of the State, who should be a Muslim, can exercise the power of clemency as he alone can exercise this prerogative is I think not quite correct. History does not uphold this contention—from what little I know of the history of Muslim Law. In practice when we have handed all powers to the Ministers, let us get rid of this power of the President also. If you deprive him of that power, the argument "why the Head of the State should be a Muslim" would become less forceful. Ordinarily it should be provided that the Prime Minister should be a Muslim because he would be the person in whom all power in fact would vest. In fact you have provided already that the advice of the Minister will be binding on the Head of the State. So the Head of the State will be for ceremonial purposes only. If you take away this power from the Head of the State, to that extent the arguments of opponents of this idea of the Head of the State being Muslim will also be met with. If we take away this power and leave it with the Ministers then it would be really much safer. Under this constitution the real power is with the Prime Minister. Considering that the President will have no real powers you will have to advertise in the newspapers for candidates to apply for the post of the Presidentship of Pakistan. Why should not one avoid becoming a President? A non-Muslim can be the Prime Minister of the State. It is the Prime Minister who rules. The President will be sitting there without any power. He

[The Honourable Mr. A. K. Brohi]

will be a mere dignified person without any dignity or power. He will only be able to invite people to parties and one can have the privilege of shaking hands with him and having meals at his table. I do not think any of my friends on the opposite would like to lead a retired life like that. They should be actively in the fight which means that they should be in the Cabinet. Their argument about the Head of the State is only sentimental and non-rational. Now if this power is taken away from the President considerable force which at present resides in this argument of the Opposition will vanish.

I have dealt with the Central field and now I want to address a few words to the House, through you, Sir, in relation to the constitutional fabric that we have visualized for the Provinces. Now in regard to this, Sir, I have certain very strong views. The blessed Governor of the Units under the constitution has very little power indeed. Either he acts under the advice of his Ministers or he acts in his discretion. There are only two cases in which he acts in his discretion and when he acts in his discretion he is subservient to the constitutional Head of the State at the top, namely the President who will superintend, control and exercise powers in respect of the head of the unit, when he in his turn is to act in the discharge of his duties 'in his discretion'. Therefore, the Governor is a glorified sort of non-entity; either he acts on the advice of his Minister or Ministers or has to look up to the President of the State for his instructions. He is merely a gear in the mechanism of constitutional set-up and yet he draws a very fat salary. Always a mature politician is generally sent in as Governor. It is of course necessary that in our constitution we should have some sort of Governor because should some sort of dislocation occur in the constitutional machinery he should be there to be able to carry the government through. So, his existence is absolutely essential in some form or shape. If you make the Head of the Unit a mere unimportant element in the constitutional machinery, I think it is a serious matter for us to consider whether all the salary, all the emoluments and all his allowances and all his paraphernalia and all his status should or should not be maintained. This is very serious. After all, what does he do? He obeys either his Minister or he looks up to the President for advice. In each case his hands are tied.

Now, Sir, I have made a little comparative study of the position as it obtains under the Indian constitution on this point. Here, Sir, I would like to give you the analysis.

In paragraph 28 of the B. P. C. Report we have a provision that there should be a Council of Ministers. Here is the analysis of the provisions in the B. P. C. Report as compared and contrasted from the provisions as they obtain in the Indian Constitution, *vis-a-vis* constitutional position of the Governor.

Paragraph 28 provides that there should be a Council of Ministers with the Chief Minister at the head, to aid and advise the Head of the Unit in the exercise of his functions except in those cases where he is empowered to act in his discretion. The paragraph in the B. P. C. Report says, the Head of the State is empowered to act in his discretion only in matters referred to in para. 111, clause (3) and para. 239, clause (2) of the Report. The first para. provides that if a contingency arises wherein no such Ministry as could command the confidence of the

legislature of the unit be formed, the Head of the Unit should be authorised to dissolve the legislature of the unit in his discretion and hold fresh elections.

Para. 239 provides that election tribunal for decision of doubts and disputes arising out of or in connection with the election to the legislature of the Units, should be appointed by the Head of the Unit in his discretion. These are, Sir, two powers that have been given in the B. P. C. Report in which he exercises his own discretion.

Now, para. 82, clause (2) provides that except in certain cases, where you have provided that the Head of a Unit should act in his discretion, the Head of the Unit when he is to act under the constitution, unless the context otherwise requires, shall act on the advice of the Minister or the Ministers. It is difficult to make out what cases the B. P. C. had in mind when it used the expression that has been already referred to. It is significant that the B. P. C. has not described any authority to determine in which case the Head of a Unit shall act in his discretion and in the context of the provisions conferred, it is very anomalous position indeed. Thus, for example, it has not been determined—this has been, for example, determined in the Constitution of India, under article 163, clause (2) in which power has been vested to be solely in the discretion of the Governor to decide whether he is to act in his discretion or not. It is, however, surprising that even in these two matters where the Head of the Unit is to act in his discretion, para. 82, clause (3) nullifies the power given to him by para. 81(1) and 82(1) of the Report. Even in these matters, he is merely to carry out the directions of others. Para. 92, clause (3) reads : “in so far as the Head of a Unit is required to act in his discretion, he should be under the general control and should comply with the direction, if any, as may be from time to time given to him by the Head of the State, but the validity of an act done by the Head of a Unit should not be called in question on the ground that it was done otherwise than in accordance with the provisions given in the B. P. C. Report. This has been left vague and the Head of the State is to exercise general control and give particular directions in his discretion or as advised by the Honourable Prime Minister.

It will thus appear that in all matters except those in which he is required to act in his discretion in paras. 81 and 82, action will have to be taken in his name but the ordering authority will be the Minister. This provision indeed will disable him from exercising his own judgement and he will only be carrying out the decisions of either the Head of the State or the Honourable Prime Minister. At the moment, it seems difficult to imagine if he will be more than a figurehead.

The Constituent Assembly should, therefore, in my humble submission seriously consider whether it is going to confer this honourable title to the Head of the State or to the person who is not to use his own talent and judgement and whose name is merely to be used for carrying out the decisions of others. Actions will be taken in the name of the Head of a Unit or the Head of the State. It would be worthwhile considering whether the enormous money should be invested in connection with the office of the Head of the State merely to provide that orders of others should issue in his name.

[The Honourable Mr. A. K. Brohi]

Now, then, Sir, I come to the constitutional position as it obtains in India. I have said, Sir, that our neighbouring country, India, also has a democratic constitution and that too of a parliamentary pattern. It has, however, thought fit to invest the Governor with useful duties, powers and functions under certain articles of the Constitution of India. No Article of the Constitution of India specifically empowers the Governor to act in his discretion in the discharge of his duties under the Constitution. The framers of that Constitution have intentionally left it to be inferred from the context of the Articles of the Constitution which of the powers, functions and duties Governors are to exercise on the advice of Minister or Ministers and which of them in his discretion. Further, in Article 163, clause (2) of the Constitution of India, it is provided, that if any question arises whether a matter is or is not a matter with respect to which the Governor is by and under the Constitution to act in his discretion, the decision of the Governor, in his discretion, shall be final and the validity of any action by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. The Governor is made the sole authority to decide which power is to be exercised by him in his discretion.

Now, Sir, I have analysed this further. Sir, if one views the Indian Constitution, it appears that the Governor can, under Article 163, exercise his power in his discretion in the following matters :

- (1) He can appoint Advocate Generals (Article 163). He can appoint Election Commissions (under Article 192). He can appoint, remove and suspend the Members of the Public Service Commission (under Articles 315, 317 and 318).
- (2) Protection of services under Articles 309, 310 and Article 311.
- (3) Exercise all the powers of clemency, etc. under Article 151. He can make recommendations to Government under Article 203 (3) regarding any demand for grant.

So, I say, Sir, a cursory glance on the Constitution of India will show all these extraordinary powers that are vested in the Governors. I, therefore, say, that we should not be very much in love with the formula that the B. P. C. have brought up for our consumption on that point and I plead before this House for its serious consideration that at least in one essential matter a power should be reserved to the Governor of a Unit, to protect the services under his control and this power should be exercised by him in his discretion. Since, I very strongly feel on this problem, Sir, I would like to give an explanation as to why I make that recommendation. Now, there are many detractors of the public services in this country. The personnel of the public services in this country have been oft described as "brown bureaucrats". It has been said that these people were initiated, trained and brought up on the lap of British masters and they have as yet not been able to have an altered outlook on the problems that are facing this country. With all respect, I say, Sir, this criticism is absolutely undeserved and it is indulgence in this type of criticism which will demoralise public services and once the public services are demoralised, then the administration of this country will completely be destroyed.

In parliamentary form of government, there is room for caution on this issue. After all, the parliamentary democracy is dependent on the sweetwill of the legislature. At any time there may be a vote of no-confidence and outgoes the Ministry and a new Ministry is formed. Ministries come and ministries go, but the Secretariat goes on for ever. The steelwork of the administration of a country is its secretariat; it is the public services who administer this country, who are the persons who bear the burden of the government of the country. If you demoralise them, if there is undue interference with their powers, if there is disrespect for them and if they are to be told to "shut up" every now and again and told that they are dishonest, then I do not think any real or honest man will take to public service as a career. If you want to keep the prestige of the public services high and if you want to raise their morale high, then you should not place them at the mercy and sweetwill of the party in power. Suppose there is section 92-A regime under the present administration, who it is who has to carry on the administration? Surely the public services of the government. Therefore these public services are responsible for giving to the public, law and order. They are the persons who are responsible for the working of the administration of this country. Now are not these public services entitled to some kind of protection in the Province? Sir, I have little experience of these matters. When I was not a member of this Government both as practising lawyer and as a citizen of this country I had good many opportunities of finding out for myself how services have been demoralised in this country. May I tell you what happens during elections? May I tell you, Mr. President, it is these District Magistrates, the District Superintendents of Police, these Mukhtiarkars, the Deputy Collectors, are the persons who are appointed returning officers. It is these officers who during these terrible days when election campaign is on, are called upon to keep public order and during this time the man who is fighting the election threatens these people by saying: "Well wait till I come in power. I shall then see that you are not here". And you know, Sir, what type of demoralisation results as a result of that threat. And what then ultimately happens is that, the public servants who had given illegal assistance to these candidates for the purpose of fighting out election and making them successful are supported by the persons who are returned to power. No doubt there are honest and God-fearing public servants too. But the corrupt officials who violate the law and violate sanctity of the ballot, and who help such men who are incompetent and without popular backing, to return to power are generally rewarded. You can imagine, Sir, when such a man is put in office, what will happen: wholesale revolution takes place. District Magistrates are transferred to far-flung areas, so that the education of their children suffers and they are put to many other difficulties. As soon as a new government is formed, whether it is formed in the Punjab or in the Frontier or in Sind, wholesale orders of transfer and degradation of officers and raising of some of the officers is hurriedly put into effect. So, Sir, vicious circle goes on. The whole provincial machinery of this country ultimately depends on the goodwill of the public services. There is need for the proper protection of the public services in the present form of government so that as a result of a change in the government they are not put to intimidation of any sort. In America it is the President who is the executive head. Some of the highest dignatories are appointed by him. His personality is so powerful that the executive is independent: under the constitution he is irremovable. But here considering that the executive is the handmaid of the legislature and considering the party politics and the sort of the times through which we are passing if these public servants are ultimately left to the tender mercy of these

[The Honourable Mr. A. K. Brohi]

popular representatives, the public services will have no honourable existence. So considering all this, it is necessary that the Governor should have adequate power in this respect so that he can exercise his discretionary powers in the interest of protecting the prestige and upholding the cause of the public servants. It should be statutorily provided in the Constitution as the duty of the Head of the State or Unit to see that there is no case of victimization that a man is not transferred without any sufficient reason to another place and no pressure is brought to bear on the officers during the time of elections. Therefore, Sir, I plead on the floor of this House with all the humility and earnestness at my command that at least there should be a power reserved to the Governor to interfere in case he is convinced that an attempt is being made to victimise a public servant. This power should be given to him to be exercised in his discretion and you can if you like put a check on the exercise of his powers by issuing a direction that he may get general or particular directions from the Head of the State. That is a very important aspect of the Provincial Administration with which I was most concerned. I am clear in my mind that the recommendation of this character if accepted will redound to the credit of the good sense of this House and will be appreciated by our public services, and all the frustration and demoralisation from which the services are suffering will disappear for ever. The services should be protected in such a manner that they are able to discharge their responsibilities and duties ably. That is all that I had to say with regard to the Provincial structure.

Now, Sir, the next point that I would like to take up is the proposed judiciary for this country. Sir, I feel very strongly that the judiciary in this country should be made as much independent as possible and kept immune from all manner of interference and control at the instance of the executive. Every judge who comes to office declares by his oath his loyalty, not to the party in power, not to the Prime Minister who has been responsible for putting him in office in the sense that he has signed his warrant of office, but loyalty to his conscience. He remains loyal to the oath that he has taken that he shall administer justice impartially, without any fear or favour. I say, Sir, that if you take steps to provide guarantees in the Constitution to our judges that they shall be left unfettered in the exercise of their just judgement and that their loyalty is to their conscience and not to party in power, I have not the least doubt but that you will have turned a new leaf in the history of Pakistan. Sir, in this connection the practical recommendations that I have to make are these: first, we cannot help but provide that the appointment of the judges has to be made by the Executive. This has to be supported because there is no other alternative unless we resort to some such method of recruiting judges as prevails in America. We have no other option but to fall back on the Executive to make appointments. But we should see that some constitutional guarantees are provided whereby the appointments are not conferred as rewards by the way of political patronage. Now the Federal Court of Pakistan having regard to its work has got about four to five Judges. Let us see that the seniormost Judge in the Federal Court of Pakistan becomes the Chief Justice of Pakistan and the other Judges should be drawn from the various Provincial High Courts. We have the following Provincial High Courts: Bengal, Sind, Punjab and Frontier. If and when Baluchistan becomes a separate unit and occupies an honourable position in the coming Federation it will have a High Court of its own, unless of course it wants to share the High Court of Sind with

Karachi. Now in each of these High Courts we have one Chief Justice. It would be as a matter of routine, that as soon as a vacancy occurs in the Federal Court and say, if a retiring Judge happens to have come from East Bengal, then *ipso facto* the Chief Justice from East Bengal High Court should take his place in the Federal Court. This means that it will not be a post conferred but a post reserved by reason of a constitutional process. We assume that the Chief Justice who would be the seniormost judge and other judges with the representatives of the various provinces. The Bench will have denominational representation. Sind will have its quota, Frontier also will have its quota on the Federal Court, and so also Bengal and the Punjab—all will have their representatives on the Federal Court. There is no harm in having Provincial representatives in the Federal Court. I do not feel shy of it. If this is how you constitute the personnel of the Federal Court the question of appointment to the Federal Court ceases to be a matter of political privilege.

Similarly the seniormost Judge in a High Court becomes its Chief Justice. Now suppose we have four Judges in the High Court of Lahore and it is felt desirable to have a fifth judge. Then I suggest that not only the Chief Justice but all the remaining Judges should have the right to recommend a Judge for appointment: they all by themselves should take a decision for the appointment of the new Member of the Court. They know the work of the subordinate judiciary and of the members of the Bar. The functions of the executive will be merely to endorse the recommendations of the whole Court. Today it is the Chief Judge alone who makes the recommendation and this works devastatingly. The new Judge knows that he owes his office to the recommendation of the Chief Justice and he feels impelled to do what the Chief Justice wants him to do. He likes to act as 'His Master's Voice'. I have got practical experience of law courts for the last 11 years of my life. I would therefore plead with this House that the appointment of the Judge of the High Court should be dependent upon the whole High Court. Where there is a difference of opinion, the recommendation of majority should prevail.

I am coming now to the appointment of subordinate judges. The question of appointment of subordinate judiciary should be handed over to the High Court of the Province. It is very wrong to entrust this duty to the Executive. If the appointments are made by the Executive, the judge or magistrate feels that he should be loyal to the Ministry and once that thought enters into his mind, he cannot help but be partial. Not only appointments, but the question of transfer should also be not left with the Provincial Governments. At present what happens is this. If a Judge has got guts and is unapproachable and unshakeable, one way of harming him is to transfer him to another place and then bring in his place a more pliable person. I do not say it happens often but it can happen and the mere fact that it can happen is necessary to warrant the taking of steps that it should not be allowed to happen.

The Honourable Dr. A. M. Malik (East Bengal : Muslim): It has happened.

The Honourable Mr. A. K. Brohi: I will not pass any comment. I know some Judges are honest and upright and that they can defy to an extent it is possible, but I am thinking of the judiciary on all-Pakistan basis. Why should we not declare the High Courts as the competent authority for the transferring of Judges so that the judiciary may be completely independent.

[The Honourable Mr. A. K. Brohi]

There is talk of separation of Executive from the Judiciary which I have been hearing for many days. What is meant by some of the protagonists of this programme of separation of the Judiciary from the Executive is that the Collector should not be the District Magistrate, that the man who exercises the revenue powers should not exercise the judicial powers. But in the way I apply this doctrine, the separation of Executive and the Judiciary *means complete control of the Judiciary by the High Court*. The appointment should merely be formally made by the Governor who merely should endorse the recommendation of the High Court. I often have asked those who ask for separation of the Judiciary from the Executive to tell me as to what they mean. They say we mean that the Collector should not be the District Magistrate. But what is the harm I ask in the Collector becoming the District Magistrate also ? If you take away from him the office of the magistrate, the Collector will not be able to realise even your land revenue. It is by reason of the fact that he has that little power to issue warrants that he secures the payment of the land revenue arrears. Let us be practical politicians. We may have read about separation of powers in the writing of Montesque or Bentham. We have provided this in the Directives of State's Policy where it has been said that the Executive should be separated from the Judiciary in three years' time. Suppose you perform this miracle and have separation of Judiciary from the Executive, how are you going to improve matters. That is what I want to know. If ultimately the District Magistrate or a Magistrate is going to be appointed by the popular representatives on consideration not of merit, not of honesty, not of impartiality but because it happens merely to suit the party in power, can the real independence of the Judiciary be guaranteed ? If in the method of appointment we eliminate the Executive and if that is accepted then the last pressure on the freedom of the judges will be withdrawn, then they will rise to their stature and they will be able to play their part diligently.

May I continue tomorrow or are you sitting up to 8-30 p.m. ?

Mr. President : Yes, up to 8-30 p.m.

The Honourable Mr. A. K. Brohi : Yes, Sir, I want to continue because I want to go away tomorrow to Hyderabad where I have some official work.

The second submission which I want to make is that the age of retirement for the Judges which has been recommended in the B.P.C. Report needs some examination. It is said that the High Court Judges should retire at the age of 60 years and the Federal Court Judges who would be the Judges of Supreme Court should retire at the age of 65. I do not think that this recommendation is wisely or properly made. I think it was my honourable friend Mr. Ahmed Jaffer who said this and his argument was : Here is a Judge who is 60 years of age and because he is 60 years of age he has grown senile and is not capable of administering the law in a High Court. If that is the reason then how in the same breath you are considering him fit for being appointed in the Federal Court ? If he is not fit for High Court, he is equally not fit for the Federal Court. By reason of the fact that if he has ceased to be fit for the High Court he has ceased to be fit for the Supreme Court. This reminds me of an old story. There was a naib-tahsildar and there were lots of reports against him that he was a rotten type of officer who would sleep over the files, would not go to the country-side to do his work. Very many adverse reports were made against him. The officer who dealt with

these reports ordered that if he is not *fit as naib-tahsildar* “try him as tahsildar” and so he was promoted. You are laughing at the stupidity of the man who passed that order. But is not that what B.P.C. has said. You are in effect saying the same thing. If he is not fit to do the job as High Court Judge after 60, put him for the Supreme Court. I have not been able to see any point in this. I want the age of retirement to be 68 in both the cases. I am not saying this merely on the sentimental ground but on substantial consideration, because I find that in Pakistan there is paucity of judicial talent. It is very difficult indeed to find duly trained personnel who should be able to do the work of administering justice at High Court level as well as on the Federal Court level.

The standard of legal education is declining and the legal education that you could have had ten years ago is not available today. This is not true only of Pakistan, but it is true of India also. It is very difficult to explain the reason, but there is undoubtedly a fall in the standard. The legal education is going from bad to worse. If you go to the Law Courts, there is no attempt at being painstaking, and no attempt to fight out a real legal battle. Sir, the real difficulty arises from administrative experience : we find it difficult to secure personnel, who should be able to do justice to the job. Now, if the High Court Judges are called upon to withdraw after the age of 60 years, finding out suitable people will become very difficult—I mean people who could be safely entrusted with this responsible office. A vacuum will be created which it will be difficult to fill in.

Then, Sir, there is another point. Supposing I am making a good bit at the Bar, say about Rs. 3,000 per month and I am asked to become a Judge where also I will get about the same amount, but with the condition that I will be prevented from legal practice after I retire at the age of 60. I would find it hard to accept this offer. I will be, I know, thrown out after my 60th year as a condemned creature, because I will not be allowed to practise. It is one of the salutary conditions of enrolment in the Bench of the High Court that you have to give an undertaking that you will not practise before that High Court at all. How can I accept an office by reason of which I am there only for a few years till I reach the age of 60 and then am prevented from even legal practice. So, Sir, it is in the interest of justice to enhance the age-limit. The practical recommendations on this point are : firstly, that the period of office to be fixed should be identical both for the Supreme Court Judges and High Court Judges. Secondly if an identical age limit has got to be fixed, I would be in favour of having the age limit at 67 or 68 years. In England, Sir, Judges are not retired by reason of age. There is no age limit fixed. Here I think it should be 67 or 68. I do not even mind 70 years.

Then, Sir, there is one more point and it is this. Sir, it is my confirmed opinion that Judges after they retire from the High Court or Federal Court should not be allowed to accept any office, political or otherwise, under the Crown. There is always a temptation that after they retire, they may go on certain Commission or as an Ambassador somewhere or become somebody somewhere ! Therefore there should be a constitutional provision debarring Judges after retirement from appointment to any office.

Sir, in England the office of a Judge is considered to be very high office and it is supposed to be a rare distinction for the member of the profession if he is singled out for being appointed as a Judge. As I have said there is no age limit at all.

Shri Dharendra Nath Datta : What if he becomes senile ?

The Honourable Mr. A. K. Brohi : If he becomes senile, by some method this issue can be determined. There is in England a procedure, some sort of report is presented by the Commission and if it is accepted the Judge is made to retire. To be senile, Sir, is not the monopoly of the Judges only, it also can apply to politicians. If a politician is certified as insane, Mr. President, you should have the power to throw him out of the House. If the House agrees, I can move that amendment and that power could be given to the President. So, Sir, to be senile is not only the monopoly of Judges. I think they get more intellectual exercise and owing to their habit of simple living and high-thinking, they are the more qualified in retaining an air of sanity and sobriety. The politicians have to face the electorate, have to face the House and the public criticism and all kinds of other impediments with which you are more familiar than I am and the chances of becoming senile in their case are greater than in the case of Judges.

I think, Sir, that a provision should be made that a Judge should retire at 68. That is the recommendation that I would like to make with regard to judiciary. And I say, Sir, with all humility that this recommendation should be accepted. The framers of the B. P. C. Report were cognizant of the fact that Judiciary must be made independent and they have struggled to the best of their ability to find out some safeguards that would ensure the independence of Judiciary. But I may say that in the practical realisation of this ideal, they have fallen much below the expected standard.

Sir, in making this recommendation, my sense of responsibility is heightened by the fact that I have been closely associated with the Judiciary of Pakistan. I hope that these recommendations would be accepted in the spirit and manner in which I have urged them.

Then, Sir, with regard to the question about the public services, I have already said that public services should be granted some manner of guarantee so that they may feel secure.

One recommendation that I have already made is that the Head of a Unit may have the power to act in his discretion to safeguard the legitimate interests of the public services.

There are one or two other matters that I would like to mention with regard to the Public Service Commission and one of these is that in the constitution of the Public Service Commission we should guarantee that half the proportion of the personnel of the Commission shall be drawn from the Services, and that the Chairman of the Public Service Commission must always be a man from the Service himself.

Shri Dharendra Nath Datta : You mean the Inspector General of Police.

The Honourable Mr. A. K. Brohi : Not necessarily the Inspector General of Police, although I do not see any harm in that. There is nothing wrong in an Inspector General of Police being the Chairman. I think the Police play a very serviceable role in the State. It is true that we associate Police with the type of a job which does not do much credit to them but I hope that with the passing of time even the Police Service will become purer. We are in the habit of denouncing the Police but after all one gets good sleep in one's house only because the Police is doing their duty outside and if the Police fail conditions would be otherwise. They are not really as bad as they are painted, although I wish and I often pray that they become even better. I do not mind an Inspector General of Police becoming the Chairman of the Public Service Commission.

After all, he will have the interest of Service at heart, the viewpoint of the Services will be appreciated by him and the Public Service Commission will become more realistic minded being manned by public servants who have lived a considerable portion of their lives in the Services and who therefore know the rules of the game. I think, Sir, some such provision must be made and the Services should be assured that their interests will be looked after and I do not mind even, Sir, if at the Centre the Head of the State, that is the President, is given discretionary powers to safeguard the Services in the manner I have recommended that the Head of the Unit, i.e., of the Provincial Government, should have the powers, with regard to Provincial Services.

Now, there is one thing more. In normal cases the recommendations of the Public Service Commission should be accepted unless they are manifestly perverse and in each case it should be provided that the Members of the All-Pakistan Services could claim right of audience at the time the questions relating to discipline and other matters concerning them are being considered by the Public Service Commission. To represent a case in print is one thing, to represent it personally is entirely another thing and at least so far as members of the All-Pakistan Services are concerned if they are being dealt with for indiscipline or if the penalty proposed is total dismissal they should have the right of audience before the members of the Public Service Commission so that they should be able to represent their case to them. These are the recommendations that I wish to make in relation to the Services.

Now there are a few general remarks that I would like to make but before I do that I must answer the question of the position of the non-Muslims in the State of Pakistan, particularly because my pointed attention was drawn by somebody who asked the question whether the personal law will be made applicable to them in the set-up that is being visualised in the Constitution.

Mr. President : I hope you will be able to finish by 8-30 ?

The Honourable Mr. A. K. Brohi : I will do my very best. In any case I can speak some time tomorrow.

Mr. President : Please see that you can finish tonight that would be better.

The Honourable Mr. A. K. Brohi : I will try my best, Sir, Thank you.

Shri Dharendra Nath Datta : What time will you take in arguing the case ?

The Honourable Mr. A. K. Brohi : In the law Court I am paid to speak per day ; so I can prolong it in order to earn more ! But here it is otherwise. I am not arguing a case. I am voicing my convictions.

Now, Sir, so far as this question of the treatment of the minorities is concerned, it has been dealt with in several books of Muhammadan Jurisprudence and they are all of the opinion that only that portion of the law,—which is of general application and import and which prevails on a nationwide basis and which a particular nation has in common with the other countries of the world,—only that portion of the law will be applicable to the non-Muslims. That is the historical position. For example, a non-Muslim can in a Muslim State enter into transactions for the sale of liquor ; he can deal in pigs also according to some of the authorities, because it is something which is personal to him. He will not be infringing the law of the country and procedure if he indulges in it, it is up to him to abstain from doing all this. But he cannot be

[The Honourable Mr. A. K. Brohi]

compelled. The law that will be passed in the State will not in any manner come into conflict with the exercise of that privilege and the general principle has very well been accepted, and the reference that I can give in relation to this point is to the "Muhammadian Jurisprudence" by Abdur Rahim. This is one of the most scholarly treatises that exists in the English language on the principles of Muslim Law and although this book was written a long time ago even then some of the questions with which we are very much concerned here have been answered by this author. I therefore commend it and especially the last chapter which is entitled as "The Law Regulating Relation between Muslims and non-Muslims" to my friends who will find that it is of considerable significance and help to them. He says :—

"The relation between Muslims and non-Muslims has several aspects, that between (1) the Muslim State and an alien non-Muslim State, (2) the Muslim State and the alien non-Muslims living temporarily within its jurisdiction, (3) individual Muslims residing or sojourning within the jurisdiction of an alien non-Muslim State and such State, (4) individual Muslims living within the Muslim State and alien non-Muslims, (5) the Muslim State and its non-Muslim subjects, and (6) individual Muslims of a Muslim State and non-Muslim subjects of that State. Questions relating to (5) and (6) have already been dealt with under other heads. I propose here to notice briefly the main principles governing the law under the remaining heads. The subjects, as I had occasion to mention, elsewhere, is dealt with in the writings of Arab jurists under the heading of *As-Siyar* or *Jihad* which is usually translated as religious war."

Then he has covered the whole range of the subject, and the conclusion that he has reached is that the law which is personal to the non-Muslims has to be left intact so long as it does not come into conflict with that species of law of the Muslim State which law it shares with other States—what you might call the secular portion of the law, a certain general type of the law which the Muslim State may share, let us say, with Germany or France : that portion of the law which it is absolutely essential for every State to have. Within the operation of that range of law there is room for personal law peculiar to the non-Muslims being allowed its full sway. But instead of taking your time it would be better if I ask you to go through that book, because you will come across very fruitful discussion on this subject. As Mr. President has directed that I should finish my speech today I do not propose to elaborate this point but personally I have reached that conclusion by an examination of all the text-books that I have got here that the Muslim law of a Muslim State is not anti-pathetic to, is not incompatible with, the due expression of the personal law of the non-Muslims in a Muslim State. This more or less is the accepted position.

Now, Sir, there is one other matter to which I would devote the rest of the time and that is this : that the ideology with which we have been concerned, which is the foundation of our Constitution as adumbrated in the Basic Principles Committee Report and even the Objectives Resolution, envisages the establishment of a territorial polity of Pakistan and Mian Iftikharuddin during the course of his argument said that the 'nation of Pakistan' is in fact the result of an act of invasion on the part of the British Crown : it is because the Punjab, Sind, the Frontier happened to be conquered by the British that they are today one nation. If the Britishers had chosen to conquer even Afghanistan, the fact of conquest and of our continued living together may have forged out of the conglomeration of the various provincial proclivities of one nation. He said you are Muslims and your whole brotherhood is before you. Why do you not admit Indonesia ? Why do you not admit Afghanistan ? Some such argument was advanced. That is a very important aspect of

the problem that he has raised. One way of tackling that problem is to say that Islam is international in outlook. In fact, the word 'international' does not convey precisely what the outlook of Islam is. Islam is supernational. When you are talking of internationalism, the units or the nations within them inter-act and inter-action is expressed as international. They are nations all the same, but the Law of Islam in the field of world affairs may be described as being supernational, and the institution of pilgrimage precisely has that moral to convey. Pilgrims to Mecca are the people who represent various Muslim sectors, who go from one place to another, and mix with others to exchange their views and ideas—exchange of ideas with a view to finding out what the common denominator of humanity is: the ultimate ambition and ideal of Islamic society is certainly supernational. Every Musalman who is a member of the Muslim brotherhood feels instinctively that he is a brother of every Muslim, no matter where that man is living, whether in Algeria, Tunisia or Madagascar or in China; he mixes with him not because of any other thing, but because of the tie of common faith, which is essentially one, and it is really this democratization which is the peculiarity of Islam. If you have no objection, I will read out to you one of the classical passages, which represents the testimony of one of the greatest scholars of the Europe. I am quoting to you, Sir, from the Travel Diary of a Philosopher—the book written by the German Philosopher named Count Keyserling. He says: "I am continuously exercised by the problem, whence Islam derives its formative power which seems so much greater than that of all other religions. Reflection upon the extreme democratic nature of Mohammedan communities has given me at last today, unless I am mistaken, the right clue to the problem. The democracy of Islam explains its power of attraction, especially in India, where conversion to it implies the only possibility of escaping from caste rigidity; and here it is a question of real equality—far more so than in the United States of America, for the Moslems are not merely supposed to be brothers, but they really treat each other as such, irrespective of race, means and position. But this democracy is nothing ultimate; it is the effect of a profounder cause, and this seems to offer to me the key to all the riddles of the advantages of the Mohammadan faith. Islam is the religion of absolute submission. What Schleiermacher has described as the nature of all religiosity does in fact define that of the Musalman. He feels himself to be at all times in the absolute power of his divine master, and moreover, in his personal power, not in that of his ministers and servants; he always stands face to face with him. This conditions the democratic quality of Islam."

Sir, I have already said our allegiance is not to Throne. Our allegiance is to God, whose laws we obey. Any person who follows His law becomes our brother, and Prophet of God says that.

Ma kana Mohammad aba ahadin mirrejalekum walakin Rasulullah wa Khatimu-n-Nabieen.

Muhammad is not the father of anybody. What he (Prophet) brings is spiritual power and if you share with him that faith, you participate in that common life to that extent.

As I say, the Muslim spirit is non-territorial. It is transcendent; it is supernational. This is what is quoted in the "Reconstruction of Religious Thought in Islam" by Iqbal. This passage, which I am reading out to you, Sir, is from Prof. Arberry's translation of "Mysteries of Selflessness": "Every Moslem nation must sink into her own deeper self, temporarily focus her vision on herself alone, until all are strong and powerful to form a living family of republics. A true and living unity,

[The Honourable Mr. A. K. Brohi]

according to the nationalist thinkers, is not so easy as to be achieved by a merely symbolical overlordship. It is truly manifested in a multiplicity of free independent units whose racial rivalries are adjusted and harmonized by the unifying bond of a common spiritual aspiration. It seems to me that God is slowly bringing home to us the truth that Islam is neither nationalism nor imperialism but a League of Nations which recognizes artificial boundaries and racial distinctions for facility of reference only, and not for restricting the social horizon of its members."

This was the mood in which Iqbal agitated for the secession of Islam from India and the creation of Pakistan. The date of the millennium has been postponed ; but in the meanwhile there is important work to be done. So we are not doing anything which is inconsistent with the supernational and transcendent spirit of Islam. All those who share in faith are brothers and what is faith ? That God's law prevails. That law has been finally manifested in the teaching and the personality of the Holy Prophet. Anybody who shares that faith is my brother. The idea is that first of all let us concentrate on our own peculiarities. Let us be powerful, strong and stable in our own place and when this job is done, then all the Muslim republics can come up together as the League of Moslem Nations. This is only the first step. It is no use waiting for the day, till ultimate polity gets evolved, and until then to do nothing ; and it was this mood that set Iqbal agitating for the creation of Pakistan as "a half-way house" and that half-way house is that for the time being let us establish a government which reflects this ideal, so that the Muslims are able to live the life which is expected of them, life of love, of justice, life of honesty, of decency, of fairplay, not of hostility, not of antagonism. After all, even the non-Muslims are created by God. Those who are non-Muslims are also equally created by God. They are entitled to, and they have the same rights as we have. But all the same create a State today, build up and strengthen your State, your own freedom. Concentrate completely, on that ideal stabilize yourself and time may come when all the republics who subscribe to this type of ideology might get integrated so as to be called the Muslim League of Nations. In contradiction to what Mr. Iftikharuddin said, I say that we are not going counter to our spiritual affinity on the basis of common faith in so much as we are not accepting the partnership of other Muslim countries. I may say that at present we have not received any request from Indonesia that they want to federate with us. Such request also we have not received from Afghanistan. Let us first of all put our house in order. Let us set an example not by talk, not merely by constitutional guarantees and constitutional appendages, superficial didacticism, but by deeds let us establish that we are God-fearing people, that we want to help everybody, that we want to play a role in order to establish the type of law which is God's law. It is after that job is done that we can proceed further. If tomorrow a Muslim republican State says to Pakistan "I want to federate with you," then that question can be taken up. There is no contradiction here ; there is nothing incompatible in that. So this particular charge which Mr. Iftikharuddin levelled against us was misconceived that we are excluding other Moslem States and that we are going to be a parochial state. The answer is given by Iqbal that the historic necessity is first of all to put your own house in order. Is your house in order ? Are you yourself or is your country so much integrated that you should go and ask others to come and federate with you so that a common life may be lived by two or three Muslim groups ? I think that is the answer that can be given to it. I think if

my friend Mian Iftikharuddin ponders over this problem, he will be able to see the justice afforded to him.

Sir, I have tried my best to give a review of the recommendations of the Basic Principles Committee Report and also to offer some such suggestions as I thought were absolutely necessary. I think, Sir, I have brought myself to the conclusion of my statement at precisely the hour at which you wanted me to finish my speech. I must thank you for the honour you have done me in giving me a patient hearing.

Mr. President : The House stands adjourned till 10 a.m. tomorrow, the 24th October, 1953.

The Assembly then adjourned till Ten of the Clock on Saturday, the 24th October, 1953.

LIST OF AGENTS IN PAKISTAN AND ABROAD FROM WHOM GOVERNMENT OF PAKISTAN PUBLICATIONS ARE AVAILABLE

I.—INLAND

1. PROVINCIAL GOVERNMENT BOOK DEPOTS :—

North-West Frontier Province :—

Manager, Government Printing and Stationery, N.-W. F. P., Peshawar.

Sind :—

Superintendent Sind Government Book Depot and Record Office, Karachi.
(Saddar).

Punjab :—

Superintendent, Government Printing Punjab, Lahore.

2. PRIVATE BOOK-SELLERS :—

East Bengal :—

Messrs. The Pak. Co-operative Book Society Ltd., Chittagong.

Messrs. Kohinoor Library, Ander-kill, Chittagong.

Messrs. Burhani Paper Mart, 11, Bangla Bazar, Dacca.

Messrs. Qazi Khurshid Mustafa, 23, Rajani Choudhry Road, Gandaria, Dacca.

North-West Frontier Province :—

Messrs. Ferozsons, 35, The Mall, Peshawar.

Karachi :—

Messrs. Aero Stores, 170, Napier Road, Karachi.

Messrs. Ferozsons, Bunder Road, Karachi.

Messrs. Kitabistan, Ltd., 18, Hotel Metropole, Victoria Road, Karachi.

Messrs. Pioneer Paper and Stationery House, 1, Avan Lodge, Opp. Dow
Medical College, Bunder Road, Karachi.

Messrs. Windsor Book Stall, Elphinstone Street, Karachi.

Messrs. Burhani Paper Mart, Campbell Street, P. O. Box 26, Karachi.

Messrs. Pakistan Law House, opposite Small Causes Court, Wadhomal
Odharam Road, Karachi.

Messrs. The Bookland, Bunder Road, Karachi.

Sind :—

Messrs. Educational Book Depot, Stationers and Book-sellers, School Road,
Hyderabad, Sind.

Punjab :—

Messrs. Danishmand & Co., Karkhana Bazar, Lyallpur.

Messrs. Ferozsons, The Mall, Lahore.

Messrs. The Punjab Religious Book Society Anarkali, Lahore.

Messrs. Nawai Waqt Publications, Ltd., Lahore.

Messrs. Manzoor & Co. (Pak.), Ltd., 6, The Mall, Lahore.

Messrs. A. M. John & Co., Kutchery Road, P. B. No. 297, Lahore.

Messrs. The Publishers United Ltd., 176, Anarkali, Lahore.

Messrs. International Agency, Gujar Basti, Lyallpur.

Messrs. Mirza Book Agency, 20, Mayo Road, Lahore.

II.—FOREIGN

The Ambassador of Pakistan Kabul c/o. Post Master Peshawar.

The High Commissioner for Pakistan in Australia, Dalton House 115, Pitt
Street, Sydney, Australia.

The Ambassador of Pakistan, Rander House Phavre Street, Rangoon Burmah.

The High Commissioner for Pakistan 499, Wilbord Street, Ottawa, Canada.

The Embassy of Pakistan, Pakistan House, 11, Sharia Hodel Laban, Garden
City, Cairo, Egypt.

The High Commissioner for Pakistan, 8, B, Hardinge Avenue, New Delhi.

The Embassy of Pakistan in 15, Dialan Tanku Umar, Diakarta.

The Embassy of Pakistan, Khiaban Takhte Jamshed Kashi No. 276, Tehran,
Iran.

The Embassy of Pakistan, Wazirva Baghdad, Iraq.

The Legation of Pakistan, Jedda, Saudi Arabia.

The Minister of Pakistan Abu Roumanch Damascus.

The Ambassador of Pakistan, 41, Karanfil Sokaka, Yanisehir, Ankara, Turkey.

The High Commissioner for Pakistan, 34/36, Lowndes Square, London, S. W. 1.

The Ambassador of Pakistan, 2201. R. Street, North-West Washington, D. C.,
U. S. A.

The Embassy of Pakistan, 17, Sadovekudrinskava Street, Moscow, U. S. S. R.

The Ambassador of Pakistan 18, Rue Loard Bvron, Paris, France

The Embassy of Pakistan, Plien 1813, No. 3, The Hauge, Netherlands.

The Minister of Pakistan, 15, Via Guisenpe Mangili, Rome, Italy.

Copies of the Acts, White Papers, Pamphlets and the Debates of the Constituent Assembly (Legislature) and the Constituent Assembly of Pakistan are obtainable on sale from the Manager of Publications, Government of Pakistan, Karachi.

Copies of Debates are available for 5 annas or 8d. or 10 cents. each
